

**MASTERS OF INTERNATIONAL LAW (L.L.M.)**

**BUILDING OR STUMBLING, BLOCKS ANYHOW: A COMPARATIVE  
APPROACH OF REGIONAL LABOUR MOBILITY FRAMEWORKS  
TOWARDS GLOBAL SOLUTIONS**

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## **ABSTRACT**

While concessions to labour mobility at the international level seem off the agenda, with the General Agreements on Trades in Services essentially tabled, the past decades have produced a proliferation of regional trade agreements (RTAs), some of which are facilitating labour mobility specifically. In this paper, the author first conducts a comparative overview of RTAs that have a form of labour mobility programmes: namely, ECOWAS, ASEAN, the European Union, NAFTA, CARICOM and MERCOSUR.

Building on an overview of the regulatory frameworks, institutions and legal instruments of these RTAs, the author seeks to find if patterns or lessons to be learned emerge that are relevant from a global perspective and to enhance the legal architecture of international labour mobility. The findings show positive outcomes, with some RTAs generating trade benefits and even moving forward with a common passport based on the newly shared regional identity, and at times even creating dispute settlement and legal systems for regional litigious matters. On the other hand, this exercise also points to various problems such as the poor implementation of the labour mobility provisions, to overly strict restrictions based on skill and to difficulty securing documents to benefit from the labour mobility programmes - in some of the agreements.

In the second part, the author discusses these challenges faced in these regional systems. She notes that prioritising skilled as opposed to low-skilled workers has not yielded a comparative advantage and may also be fostering irregular movements. She also highlights that trade liabilities emerge from the association of countries with similar levels of development and that it accentuates the North-South paradigm. These problems disrupt access to the benefits of the programmes, which ultimately creates irregular migrations and uneven labour standards for migrant workers. Finally, the author finds that most RTAs reviewed are developing their own legal frameworks with limited interest for the international instruments available, which are at best a source of inspiration.

In the third part, the author invites the reader to challenge many preconceived ideas on international mobility emerging from the first two sections, and shares her thoughts on ways forward to build an international framework, based on existing scholarly work and considering the unpopularity of the GATS. She concludes with a discussion on 'new regionalism' as an alternative until a shared international framework to facilitate migrations is set up, with the possibility of a merger between RTAs from the North and the South. This, she argues, could possibly unleash the full benefits of labour mobility such as increased GDPs, poverty reduction and tackling irregular migrations; benefits that have not been entirely felt to date.

**KEYWORDS:** migration, labour mobility, international law, GATS, trade, regional trade agreements, new regionalism

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# **BUILDING OR STUMBLING, BLOCKS ANYHOW: A COMPARATIVE APPROACH OF REGIONAL LABOUR MOBILITY FRAMEWORKS TOWARDS GLOBAL SOLUTIONS**

*‘The current anti-globalization non-system for labour mobility is lose-lose- lose: unjust in frustrating the legitimate desires of those who would like the opportunity to move but are blocked, unnecessarily cruel and inequitable to many who do manage to move, and ultimately ineffective in meeting recipient countries’ desire for complete border control’<sup>1</sup>*

- Lant Pritchett, Professor of the Practice of International Development at the Kennedy School of Government at Harvard University & and Rebekah Smith, Migration Policy Consultant at The World Bank

*‘There is an imperative need for fresh approaches and bold initiatives to promote international labour mobility for the welfare of the global community.’<sup>2</sup>*

- Piyasiri Wickramasekara, Senior specialist with the International Labour Organisation

## **1. INTRODUCTION**

Whether they were free to do so or not, humans have always circled the globe in search of a better life. Therefore, it comes as no surprise that despite a tighter enforcement of political borders in the past decades, citizens of all nations persist in this quest, through regular or irregular channels, and sometimes at the risk of their own lives.<sup>3</sup>

This dissertation explores a counter-current to such borders: regional trade agreements that ease the circulation of workers from fellow regional member states on their territory. While concessions with regard to labour mobility at the international level seem stuck at the *status quo* with the General Agreements on Trades in Services (hereafter GATS) essentially tabled, recent decades have shown

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<sup>1</sup> Pritchett Lant and Rebekah Smith. ‘Is there a Goldilocks Solution? “Just Right” Promotion of Labor Mobility.’ *Centre for Global Development Policy Paper* 094 (2016), *Centre for Global Development Online*. Web. Nov. 7, 2017, Page 13.

<sup>2</sup> Wickramasekara, P., ‘Globalisation, International Labour Migration and the Rights of Migrant Workers.’ *Third World Quarterly* 29.7 (2008): 1247-1264, Page 1247.

<sup>3</sup> Squire, Vicki. ‘Governing Migration through death in Europe and the US: Identification, Burial and the Crisis of Modern Humanism.’ *European Journal of International Relation* 23.2 (2016): 513-532, Page 514.

a proliferation of regional trade agreements, mostly to facilitate the flow of goods but also, at times, for services.<sup>4</sup>

These regional unions were formed for various reasons, but most of them have geographic proximity, shared history and, at times, language in common.<sup>5</sup> The popularity of these frameworks has risen in recent years and most of them were also established to weigh in more heavily at the negotiating table and to echo what the European Union and North American Free Trade Agreement (hereafter NAFTA) had set in motion.<sup>6</sup> These agreements are a manifestation that some states have decided to open their markets to neighbouring service providers.

The purpose of this paper is to conduct an overview of regional trade agreements that have any form of common labour mobility programmes, to examine the regulatory frameworks of such programmes when relevant, and to determine if patterns or lessons to be learned emerge from a global perspective. While the literature on regional trade agreements *per se* is plentiful, fewer authors have focused strictly on labour mobility. Indeed, there is a gap in academic research when it comes to international mobility, given the pressing need for original political and legislative solutions to manage immigration, especially in the way policies may be affecting trade in services.<sup>7</sup> As Pritchett and Smith put it:

‘An examination of the top ten most cited papers by thirteen top development economists finds that only one of those 130 papers deals with international migration as a primary topic. This is not because none of these authors ever produce works on migration (many have) but these are not the papers that garner high profile publication, citation, and attention. ... Moreover, much of the academic research on migration focuses on the consequences on host

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<sup>4</sup> GATS, ‘General Agreement on Trade in Services, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B’, [www.wto.org](http://www.wto.org), Apr. 15, 1994, 1869 U.N.T.S. 183, 33 I.L.M. 1167. Web. Jan. 15, 2018; Roy, M., Marchetti, J. & Lim, H., ‘Services liberalization in the new generation of preferential trade agreements (PTAs): How much further than the GATS?’, *World Trade Review* 6.2 (2007): 155-192, Pages 161, 162.

<sup>5</sup> Bravo, Karen E. ‘Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?’, *Saint Louis University Public Law Review* 28 (2008): 78-114, Page 108.

<sup>6</sup> Mouhoud, El Mouhoub. *Les nouvelles migrations : un enjeu Nord-Sud de la mondialisation*. London : Universalis, 2006. Print. Page 36.

<sup>7</sup> OECD, *The Future of International Migration to OECD Countries*, Paris : OECD Publishing, 2009. *Bibliothèque Nationale du Québec*. Web. Jan. 11, 2018, Page 9 ; Borchet et al. ‘Policy Barriers to International Trade in Services.’ *The World Bank Economic Review* 28.1 (2014) :162–188. *Oxford Academic Online*. Web. Feb. 2, 2018, Abstract.

countries, even though all agree these are a tiny fraction of the gains to the movers.’<sup>8</sup>

In the course of this paper, we will first examine existing agreements that have labour mobility provisions, regardless of the implementation stage. We have chosen to approach these RTAs by the continent on which they are taking place. With the complexity and multiplicity of multilateral agreements, this will facilitate the reading and narrow down our analysis. For each of them, we will discuss what academic research and governmental reports tell us so far about their performance and frameworks.

In the second part of this paper, we will build upon the findings that emerge from this exercise to explore if there are any lessons to be learned for states interested in enhancing or creating labour mobility programmes or to lay the foundations of a more fluid labour mobility system on a global scale, as prescribed by the drafters of the GATS. Indeed, this author concurs with Marion Panizzon’s view that the GATS, still the only generally accepted body of law to facilitate labour migration, is too technical, ambiguous and narrow to seal an increasingly fractured system.<sup>9</sup> In the third part, we present our comments and position on ways forward to tackle the issues exposed in the first two parts.

## **2. PRELIMINARY REMARKS**

### **2.1. Glossary of abbreviations**

AEC: ASEAN Economic Community

ASEAN: Association of Southeast Asian Nations

AFTA: Asian Free Trade Area

CARICOM: Caribbean Community and Common Market

CARIFORUM: CARICOM signatories to the Georgetown Agreement with other Pacific Group of states (ACP)

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<sup>8</sup> Lant Pritchett and Rebekah Smith. Ibid, Note 1. Page 10.

<sup>9</sup> Panizzon, Marion. ‘Trade and Labor Migration GATS Mode 4 and Migration Agreements’, *www.library.fes.de*. Occasional Papers: Dialogues on Globalization, 2010. Web. Nov. 7, 2017, Page 49.



CFTA: Continental Free Trade Area

COMESA: Common Market of Eastern and Southern Africa

CUFTA: 1988 Canada-United States Free Trade Agreement

DR-CAFTA: Dominican Republic-Central America Free Trade Area

EAC: East African Community

ECOWAS: Economic Community of West African States

EU: European Union

GATS: General Agreement on Trade in Services

GATT: General Agreement on Tariffs and Trade

ILO: International Labour Organisation

IMF: International Monetary Fund

IOM: International Organization for Migration

MERCOSUR: Southern Cone Common Market

NAFTA: North American Free Trade Agreement

OCDE: Organisation for Economic Co-operation and Development

OHCHR: Office of the High Commissioner for Human Rights

RTA: Regional Trade Agreements

SADC: Southern African Development Community

TiSA: Trade in Services Agreement

UNHCR: United Nations High Commissioner for Refugees

WTO: World Trade Organization

## **2.2. Definitions**

### ***‘Developing’ and ‘Developed’ countries***

Though there are many nuances to be taken into account when discussing the economic classification of countries, we must refer to levels of development for

our discussion.<sup>10</sup> We will use the United Nations Department of Economic and Social Affairs classification of countries when referring to ‘developed’, ‘developing’ and ‘least developed’ countries.<sup>11</sup>

### ***Irregular migration***

Also referred to as illegal migration (although neither expressions have an internationally accepted definition), irregular migration refers to a migration in contravention of the regulations of the country of origin, transit or destination, whether the entry into the territory was irregular or whether the immigrant overstayed the duration of his permitted period in the territory.<sup>12</sup>

### ***Labour markets***

For the purpose of this research, labour markets refer to agreements between more than two countries, whether bearing restrictions or not, to have a free flow of labour, whether skilled, unskilled or both, without more technical barriers such as visa requirements or work permit applications. Though the usual levels of integration as outlined in the GATS are free trade area, customs union, common market, and economic and political union, this research does not intend to follow this firmly established structure as it is exclusively focused on services rather than goods.<sup>13</sup>

### ***Labour mobility***

Though a definition of ‘labour mobility’ does exist in the GATS, we will refer to it as the movement of migrant workers, not only temporary (as intended in the GATS), but also semi-permanent or permanent. According to the GATS, there are

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<sup>10</sup> Nielsen, Lynge. ‘Classification of Countries Based on Their Level of Development: How it is Done and How it Could be Done.’ *pdfs.semanticscholar.org*. International Monetary Fund Working Paper, 2011. Web. Jan. 11, 2018, Page 3.

<sup>11</sup> United Nations. ‘Country Classification.’ *www.un.org*. World Economic Situations and Prospects (WESP), 2014. Web. Jan.11, 2018.

<sup>12</sup> After the definition as outlined in - Opeskin et al. *Le droit international de la migration*. Cowansville : Éditions Yvon Blais, 2014. Print. Page 514.

<sup>13</sup> Virág-Neumann, Ildikó. ‘Regional Trade Agreements and the WTO.’ *www.kgk.uni-obuda.hu*, 7th International Conference on Management, Enterprise and Benchmarking, 2009. Web. Nov. 7, 2017, Page 383.

four modes when it comes to trade in services, Mode 4 being the most interesting for this paper. Cole and Guillin sum them up as follows:

‘Mode 1: Cross-border supply – the possibility for non-resident service suppliers to supply services cross-border into the Member's territory (e.g. bank transfers).

Mode 2: Consumption abroad – the freedom for the Member's residents to purchase services in the territory of another Member (e.g. tourism).

Mode 3: Commercial presence – the opportunities for foreign service suppliers to establish, operate or expand a commercial presence in the Member's territory, such as a branch, agency, or wholly owned subsidiary (e.g. foreign direct investment).

Mode 4: Presence of natural persons – the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service (expatriates).<sup>14</sup>

### ***Migrant workers***

This paper uses the Article 11 definition of the Convention No 143, where a migrant worker is ‘a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker’. This definition excludes many workers entering temporarily, such as artists, seamen, and frontier workers, among others.<sup>15</sup>

### ***Non-migrant foreign workers***

Non-migrant foreign workers are either in the country of destination for a short duration for the purpose of seasonal work below three months or are business visitors paid in their country of origin. This paper does not focus on such workers.<sup>16</sup>

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<sup>14</sup> Cole, M.T., and A. Guillin. ‘The determinants of trade agreements in services vs. Goods.’ *International Economics* 144 (2015): 66–82. *Science Direct*. Web. Jan. 31, 2018, Page 68.

<sup>15</sup> International Labour Organisation (ILO). ‘Migrant Workers (Supplementary Provisions) Convention.’ [www.ilo.org](http://www.ilo.org). 24 June 1975 C143. Web. Jan. 16, 2018.

<sup>16</sup> United Nations Economic and Social Council. ‘In-depth review of labour mobility and globalisation.’ <http://www.unece.org>, Working Paper ECE/CES/2015/11, 2015. Web. Nov. 7, 2017.

## ***North and South concepts***

When we refer to North and South in this thesis, we use concepts that go beyond mere geography. As Kruger puts it:

‘The terms North and South are used in scientific as well as political discourse to describe the relationship between the rich and industrialized countries, on the one hand, and the poor, less industrialized countries on the other hand. Despite the geographic connotation, the dividing line between North and South is not a spatial one since several countries from the Southern Hemisphere belong to the North and vice versa. Instead, central to the concepts of North and South are different economic, political, and social structures, which together generate a specific level of development, which can be measured using a variety of indicators such as gross domestic product (GDP) per head, productivity, unemployment, illiteracy rates, infant mortality, life expectancy, and the like.’<sup>17</sup>

### ***‘Regional’ as used in ‘Regional trade agreements (RTAs)’***

For the purpose of this paper, regional trade agreements, which we will also refer to as ‘multilateral agreements’ and ‘RTAs’, go beyond what is defined by the World Trade Organisation (hereafter WTO) as ‘reciprocal trade agreements between two or more partners’. They include free trade agreements and customs unions.<sup>18</sup> In this paper, the author strictly focuses on RTAs with three or more partners (plurilateral), and excludes bilateral agreements. One of the reasons for this is the overwhelming rate at which bilateral RTAs (also called preferential agreements) are being signed. Bilateral agreements have become so widespread and accounted for 79% of RTAs notified to the WTO in 2009, and analysing them in the course of this paper might bring us astray from the core subject matter of labour mobility.<sup>19</sup>

Moreover, the following discussion on regionalism takes place outside the realms of pure international trade law. Fioramonti and Nshimbi also propose a more fluid take on regionalism:

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<sup>17</sup> Kruger, L. ‘North-North, North-South and South-South Relations.’ *www.eolss.net*. Global Transformation and World Future, 2008. Web. Nov. 7, 2017, Page 2.

<sup>18</sup> World Trade Organization. ‘Regional Trade Agreements and Preferential Trade Arrangements.’ <https://www.wto.org>, 2017. Web. Jan. 11, 2018.

<sup>19</sup> Jovanovic, Miroslav N. *International Handbook on the Economics of Integration : General Issues and regional groups*. Cheltenham : Edward Elgar Publishing, 2011. Print, Page 9.

‘Regionalism is broader than the market-driven concept of regional economic integration. However, we use the term regionalism here interchangeably with regional economic integration and regionalisation to refer to the ideal of the integration of proximate states in a given geographical area.’<sup>20</sup>

Similarly, the reader should be aware that there are various forms of regional integration at play in the international trade systems, such as free trade area, customs union, common market, and political integration.<sup>21</sup> However, this paper does not focus on the type of trade framework chosen by RTAs but rather on the labour market at play in the RTA.<sup>22</sup>

### ***Unskilled, low-skilled, skilled workers***

Migration studies routinely separate skilled from unskilled or low-skilled workers, but do not set out systematically or precisely the differences among the three. At which point does a position move from unskilled to low-skilled to skilled, or as proposed by some researchers, low, medium or highly skilled?<sup>23</sup> For the purpose of this paper, we will approach skilled workers as those workers with a completed high school diploma and a form of technical, university or vocational training, and unskilled and low-skilled will be used as synonyms.<sup>24</sup>

### **2.3. A note on excluded agreements and common markets**

Many labour agreements that facilitate global mobility do exist beyond this study in the form of bilateral agreements but have been purposely excluded to focus on multilateral agreements, as stated above. As of 2010, a massive 462 RTAs had been notified to the WTO and as of 2014, that number had increased to 511.<sup>25</sup> However, most of these RTAs do not have labour mobility programmes.<sup>26</sup> Indeed,

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<sup>20</sup> Fioramonti, Lorenzo and Chris Nshimbi. *Regional Migration Governance in the African Continent. Current State of Affairs and the Way Forward*. First Edition. Bonn: Stiftung Entwicklung und Frieden, 2016. <http://www.sef-bonn.org>. Web. Jan. 15, 2018, Page 14.

<sup>21</sup> Vicard, Vincent. ‘Trade, conflict, and political integration: Explaining the heterogeneity of regional trade agreements.’ *European Economic Review* 56 (2012): 54–71. *Science Direct*. Web. Jan. 31, 2018, Page 55.

<sup>22</sup> Vicard, Vincent. Ibid, Note 21, Page 55.

<sup>23</sup> El Mouhoub, Mouhoub. Ibid, Note 6. Page 133.

<sup>24</sup> Ruhs, Martin. *The Price of Rights*. Princeton: Princeton University Press, 2013. Print, Chapter 4.

<sup>25</sup> Reyes et al. ‘Regional Agreements and the Pattern of Trade : A Networks Approach.’ *The World Economy* 37.8 (2014): 1128-1151. *Wiley Online*. Web. Feb. 1, 2018, Note 1.

<sup>26</sup> Lewis, MK. ‘The Prisoners’ Dilemma Posed by Free Trade Agreements: Can Open Access Provisions Provide an Escape?’ *Chicago Journal of International Law* 11.2 (2011): 632-661 *University of Chicago Online*. Web. Nov. 7, 2017, Page 638.

in 2011, Van Grassek reported that only 27,9% of RTAs notified to the WTO covered both goods and services.<sup>27</sup> Out of these, this paper only focuses on those RTAs that go beyond the GATS commitments.

## **2.4. Disclaimer**

RTAs are highly political and ever-changing, especially in an age where there seems to be an ongoing fight between globalisation and protectionism. We foresee that our analysis could quickly become outdated especially our discussion on NAFTA, which, at the time of submission, was a regional agreement in jeopardy. However, the debate on the facilitation of labour mobility could persist for many years to come, despite the challenge of the literature on RTAs not ‘keeping the pace’ with their multiplication.<sup>28</sup>

Though data from academic papers may be invoked from time to time, we must highlight that the following paper is not an empirical study. Social scientists from all sectors have tried to draw clear correlations between the influx of migrant workers and various consequences on the economy with regard to employment but, given the difficulty in accessing data and the transnational nature of migration, we prefer to conduct a framework analysis.<sup>29</sup> The problem of conclusive data on migration, outlined further below in Section 4.2, also invites us to take the numbers and dates in the following paper with a pinch of salt, as most of them are intertwined with ever-changing policies, which academics and practitioners alike have trouble monitoring.

Similarly, given imperatives to present a succinct exposé, fellow readers will undoubtedly question the conclusions and findings of this paper or deem them reductive. However, we take the position that, though empirically imperfect, research and discussions on international mobility should not refrain from commenting on patterns taking shape despite the handicap of insufficient data.

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<sup>27</sup> Van Grassek, C. *The Political Economy of Services in Regional Trade Agreements - OECD Trade Policy Papers, No. 112*. Paris: OECD Publishing, 2011. Print. Page 31.

<sup>28</sup> Froese, Marc D. ‘Regional Trade Agreements and the Paradox of Dispute Settlement.’ *Manchester Journal of International Economic Law* 11.3 (2014): 367-396. *Hein Online*. Web. Feb. 2, 2018, Page 367.

<sup>29</sup> Joint Paper (ILO, OECD, World Bank). ‘The Contribution of Labour Mobility to Economic Growth.’ *www.ilo.org*, 2015. Web. Nov. 7, 2017, Page 86.

### **3. REGIONAL AGREEMENTS WITH LABOUR MOBILITY**

#### **3.1 Introductory comments**

Labour mobility is first a phenomenon that occurs regardless of the involvement of the state. Individuals are free to make arrangements to try and work in a foreign country and do so routinely, to a point where the influx of workers often creates a massive diaspora within the host country, as is the case for Malays in Indonesia and Haitians in the Dominican Republic.<sup>30</sup> Some may be surprised that international migration accounts only for roughly 3 per cent of the world population, a modest number, and is not as widespread as headlines may suggest.<sup>31</sup> However, it is common knowledge that there is no universal right of entry to a foreign country, and therefore, all regular movement of workers usually involves another state's policy allowing the entry.

This paper is interested in initiatives by states to facilitate the influx of foreign workers specifically by way of regional trade agreements. So far, most of the multilateral agreements with effective labour mobility provisions have been organised by regions within continents and we will examine them as such.

#### **3.2. Africa**

Africa is a particularly interesting continent given the proliferation of regional trade agreements that are ongoing, amidst talks to create a continent-wide trade zone, the Continental Free Trade Agreement (CFTA).<sup>32</sup> According to Geda and Seid, this popularity of RTAs in the continent is unsurprising:

‘This proliferation of RECs partly indicates that the issue of regional integration is very crucial for African countries.<sup>1</sup> This is not surprising given that about 35% of the population and one third of the economies in the continent are trapped as landlocked countries whose trade and development depend on what happens in their coastal neighbors. In

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<sup>30</sup> International Labour Organisation (ILO). ‘International Labour Conference: Towards a fair deal for migrant workers in the global economy.’ [www.ilo.org](http://www.ilo.org), 2004. Web. Nov. 7, 2017, Page 5.

<sup>31</sup> Opeskin et al. Ibid, Note 12, Page 377.

<sup>32</sup> African Union. ‘CFTA-Continental Free Trade Area.’ <https://au.int>, 2017. Web. Nov. 7, 2017.

addition, most countries in Africa are small and hence their economic feasibility and global bargaining position individually are highly limited.<sup>33</sup>

Among the most renowned agreements is the East African Community (EAC), and the Southern African Development Community (SADC), but both have failed to set the free movement of labour (and even the full movement of visitors) in motion. The EAC has proclaimed it on paper but recent studies show that the protocol for the free movement of workers has yet to be fully implemented and faces barriers such as discretionary executive blockages.<sup>34</sup> The same applies to the Common Market for Eastern and Southern Africa (COMESA), which is the largest regional trade agreement on the continent, but it has not facilitated the movement of workers.<sup>35</sup>

Consequently, the only African agreement facilitating labour mobility is the Economic Community of West African States (ECOWAS). The collective territory of ECOWAS, formerly known as West Africa under colonization rule, has its origins in the creation of the CFA franc in 1945, a common currency for French-speaking West African countries, to create a monetary union between four states in the turn of 1964 and 1965.<sup>36</sup> A proposition to unite the area more globally was made official in 1975, with the signature of the Treaty of Lagos.<sup>37</sup> Labour mobility is based on the Protocol relating to Free Movement of Persons, Residence and Establishment of the ECOWAS. It was also followed by a Protocol of Non-Aggression (1978) and a Protocol Relating to Mutual Assistance on Defence Pact (1981), along with provisions on security coordination (including a ban on the entry of new weapons without other states' approval), and permanent structures of conflict management.<sup>38</sup>

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<sup>33</sup> Geda, Alemayu and Edriss Hussein Seid. 'The potential for internal trade and regional integration in Africa.' *Journal of African Trade* 2 (2015): 19–50. *Science Direct*. Web. Jan. 31, 2018, Page 20.

<sup>34</sup> Christopher Nshimbi and Lorenzo Fioramonti. Ibid, Note 20, Page 9.

<sup>35</sup> Christopher Nshimbi and Lorenzo Fioramonti. Ibid, Note 20, Page 15.

<sup>36</sup> ECOWAS. 'Economic Community of the West African States – History.' *www.ecowas.int*, 2016. Web. Feb. 3, 2017.

<sup>37</sup> ECOWAS. 'Protocol Relating to Free Movement of Persons, Residence and Establishment.' *documentation.ecowas.int*, A/P 1/5/7929, May 1979. Web. Jan. 15, 2018.

<sup>38</sup> Powell, Joseph and Trisha Low. 'African Regional Trade Agreements as Flexible Legal Regimes; Is the WTO Quietly Fading Away?: The New Regionalism and Global Trade Rules.' *The Georgetown Journal of Law Public Policy* 9 (2011): 261-282, Pages 267, 268.



Today, it is signed by fifteen nations, which altogether constitute a population of above 300 million people, and 7.5 million West Africans are now internal migrants within the ECOWAS zone.<sup>39</sup> An additional protocol aiming at supporting the flexibility of the common market and improving the rights of foreign workers has been introduced but not properly implemented.<sup>40</sup> Quayson and Arhind argue that it is hindered by ‘the ineffective application of the law, economic failings, competing political priorities among member states, national sovereignty and non-ratification of additional protocols.’<sup>41</sup>

Despite these failings, West Africa has taken the lead in labour mobility in Africa, with the creation of ‘ECOWAS citizens’ (as displayed on their passport) who can now work and start a business freely within the region and, as author Kristina Tounezis puts it, have ‘embraced’ cultural integration’.<sup>42</sup> She argues that the good functionality of the agreement is thanks to Article 27 of the ECOWAS Treaty of 1975. This article affirms that member states among the ECOWAS shall be ‘regarded as Community citizens and accordingly Member states undertake to abolish all obstacles to their freedom of movement and residence’ and be ‘[allowed] to work and undertake commercial and industrial activities’.<sup>43</sup> The right to work in another member country was formalised in 1992, shortly after the introduction of regional residency cards (1990) and the adoption of uniform immigration and emigration forms.<sup>44</sup>

This RTA rests on the premise that the integration of West African countries can generate economic, cultural and social cohesion in the region.<sup>45</sup> Moreover, the ECOWAS member countries have agreed on a Convention on Social Security, have ratified the Geneva Convention relating to the Status of Refugees, and most

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<sup>39</sup> ECOWAS, ‘Economic Community of the West African States – History’, Ibid, Note 36.

<sup>40</sup> Changwe Nshimbi, Christopher and Lorenzo Fioramonti. ‘A region without borders? Policy frameworks for regional labour migration towards South Africa.’ *www.miworc.co.za*, 2013. Web. Nov. 7, 2017, Page 45.

<sup>41</sup> Quayson, Ato and Antonela Arhin. *Labour Migration, Human Trafficking and Multinational Corporations*. London : Routledge, 2012. Print, Section 6.1.

<sup>42</sup> Touzenis, Kristina. *Free Movement of persons in the European Union and Economic Community of if West African States: a comparison of law and practice*. Paris: UNESCO, 2012. Print. Page 7.

<sup>43</sup> ECOWAS. *Protocol Relating to Free Movement of Persons, Residence and Establishment*. Ibid, Note 37.

<sup>44</sup> OECD. *West African Studies: Regional Challenges of West African Migration*. Paris: OECD Publishing, 2009. *Bibliothèque Nationale du Québec (Online)*. Web. Feb. 1, 2018, Page 132.

<sup>45</sup> Bolarinwa, Joshua Olusegun. ‘The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration.’ *Insight on Africa* 7.2 (2015): 154-168, Page 156.

importantly, the United Nations (hereafter UN) Resolution No 60/277 on International Migration and Development and the International Convention on the Protection of the Rights of All Migrant Workers.<sup>46</sup>

Observers argue that ECOWAS has been a successful endeavour so far, but has also caused negative ancillary effects, such as an increase in human trafficking in the region, of HIV prevalence and in illegal crossings to Europe.<sup>47</sup> Indeed, deserving ECOWAS citizens are often not able to enjoy the privileges of the Agreement due to trouble in securing official identity documents or, at times, to their ignorance of the availability of the programme in the first place.<sup>48</sup> Joshua Olusegun Bolarinwa further adds that ECOWAS states have unequal economies and political regimes, some of which are too weak to quickly absorb legislative changes at the national level, which has resulted in unjust deportations and abuses.<sup>49</sup>

Human trafficking is especially pervasive in West Africa and political leaders have adopted a plan of action on this issue specifically, though it appears unsuccessful to date due to the 'low level of commitment of some countries, sporadic and uncoordinated actions, lack of adequate data and technical incapacity for surveillance and tracking down of traffickers.'<sup>50</sup> Aderanti Adepoju further adds that there are problems with unequal currencies and imbalance of powers between economic giants Nigeria and Ivory Coast with other ECOWAS members.<sup>51</sup> To tackle this, another interesting development among the ECOWAS is a Protocol Relating to the Fund for Cooperation, Compensation and Development of the Economic Community of West African States. This Protocol calls to compensate ECOWAS implementation costs for financially strained Member states, and to promote financing and development projects of 'less developed' state members.<sup>52</sup>

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<sup>46</sup> Quayson, Ato and Antonela Arhin. Ibid, Note 42, Section 6.1.

<sup>47</sup> Bolarinwa, Joshua Olusegun. Ibid, Note 46, Page 164.

<sup>48</sup> Quayson, Ato and Antonela Arhin. Ibid, Note 42, Section 6.1; OECD. Ibid, Note 44, Page 135.

<sup>49</sup> Bolarinwa, Joshua Olusegun. Ibid, Note 46, Page 165.

<sup>50</sup> Quayson, Ato and Antonela Arhin. Ibid, Note 42, Section 6.1.

<sup>51</sup> Adepoju, Aderanti. *Créer une Afrique du l'Ouest sans Frontières in Migrations sans Frontières : Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print, Pages 226, 227.

<sup>52</sup> Thuo Gathii, James. *African Regional Trade Agreements as Legal Regimes*. Cambridge: Cambridge University Press, 2011. Print, Page 45.

Joshua Olusegun Bolawinra issues a series of recommendations for a more functional ECOWAS, that are also relevant for our analysis of labour mobility schemes as a whole, including harmonising domestic laws with the treaty and sub-regional treaties, identifying ways to improve the speed of custom formalities and the access to information on the protocols and to the ECOWAS passport.<sup>53</sup> Indeed, Geda and Seid highlight problems of high transaction costs in ECOWAS borders due to poor bureaucratic infrastructure and administrative delays.<sup>54</sup> Given all the elements that remain to be tweaked to make ECOWAS truly work, he believes that West Africa is not ready for the free movement of people at its current stage of development.<sup>55</sup> Nonetheless, ready or not, the West African region, as of 2005, held the highest share of internal migrants, sitting at 50 per cent of the population.<sup>56</sup>

Moreover, despite these challenges, the ECOWAS Protocol on Free Movement has helped to facilitate (and set the precedent for) a labour migration system in West Africa (and the whole of Africa, for that matter).<sup>57</sup> This is a tremendous achievement in and of itself. Moreover, not all authors agree that, at least in the African context, this apparent lack of structure is a bad thing. Indeed, according to James Thuo Gathii, African economies are aware of their limits in terms of development, and therefore the flexible RTA schemes, though different from traditional trade models, might be more adapted to their reality. Similarly, some of these RTAs have embraced compensatory mechanisms among the alliance, an indirect way of rejecting the non-discrimination principle of the GATS.<sup>58</sup> He sums up the whole African experience with RTAs in these eloquent terms:

‘Viewing African RTAs as flexible regimes has the advantage of allowing these RTAs to be understood on their own terms, rather than as treaty regimes on a path toward becoming much like the European or North American counterparts. In so doing, it becomes

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<sup>53</sup> Bolarinwa, Joshua Olusegun. Ibid, Note 46, Pages 166, 167.

<sup>54</sup> Geda, Alemayu and Edriss Hussein Seid. Ibid, Note 33, Page 37

<sup>55</sup> Bolarinwa, Joshua Olusegun. Ibid, Note 46, Page 166.

<sup>56</sup> OCDE. ‘West African Studies: Regional Challenges of West African Migration.’ Ibid, Note 45, Page 129.

<sup>57</sup> Changwe Nshimbi, Christopher and Lorenzo Fioramonti. Ibid, Note 40, Pages 14, 21, 22.

<sup>58</sup> Thuo Gathii, James. ‘African Regional Trade Agreements as Flexible Legal Regimes.’ *North Carolina Journal of International Law & Commercial Regulation* 35 (2010): 571-668, Pages 590-592.

possible to better and more accurately understand the challenges that these RTAs have been designed to address and that have in turn shaped them. As Tiyanhata Maluwa has argued, African countries have preferred informal institutions to the “bureaucratic strictures and international rule-making legislative processes of formal international institutions.”<sup>59</sup>

### **3.3. Asia**

The key regional trade agreement with labour mobility provisions in Asia is the Association of Southeast Asian Nations (hereafter ASEAN). It was initiated by five countries (Indonesia, Malaysia, Philippines, Singapore and Thailand) with the Bangkok Declaration of 1967 establishing an Association for Regional Cooperation and solemnised in 1976 by the Treaty of Amity and Cooperation in Southeast Asia.<sup>60</sup> Beyond cultural and economic cooperation, this association also aimed at ‘the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.’<sup>61</sup> The association also stated that other countries of the Southeast Asian region were free to join. The evolution of this agreement was made possible by the creation of a free trade area (the Asian Free Trade Area: AFTA), through the 2009 ASEAN Free Trade in Goods Agreement and an annual forum with ASEAN leaders.<sup>62</sup> It now gathers ten member countries.<sup>63</sup>

When it comes to services, it is the 1995 Framework Agreement of Trade in Services modelled after the GATS and focused on skilled workers that still rules the present day situation.<sup>64</sup> ASEAN, also referred to as the AEC (ASEAN Economic Community), will soon encompass 600 million residents and 285 million workers

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<sup>59</sup> Thuo Gathii, James. Ibid, Note 52, Page 3.

<sup>60</sup> ASEAN. ‘Bangkok Declaration.’ *asean.org*, Bangkok: Thailand, 8 August 1967. Web. Jan. 15, 2018; Desierto, Diane A. ‘ASEAN’S Constitutionalization of International Law: Challenges to Evolution Under the New ASEAN Charter.’ *Columbia Journal of Transnational Law* 49.2 (2011): 268-304, Page 279.

<sup>61</sup> ASEAN. ‘Association of Southeast Asian Nations.’ *www.asean.org*, 2017. Web. Feb. 3, 2018.

<sup>62</sup> Desierto, Diane A. Ibid, Note 61(2), Page 279.

<sup>63</sup> ASEAN. Ibid, Note 61.

<sup>64</sup> Basu Das, Sanchita et Jayant Menon. *The ASEAN Economy Community : A Work in Progress*. Singapore : Institute of Southeast Asian Studies, 2013. Print. Page 95.

in the ten ASEAN member states.<sup>65</sup> The AEC regroups Brunei, Cambodia, Laos, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. It is regarded as the most successful agreement of the Asian region.<sup>66</sup> The speedy evolution of ASEAN is characteristic of a blossoming Asia-Pacific region, which entered 80% of RTAs (in terms of goods or services) after 2001.<sup>67</sup>

Over its first 15 years of existence up to 2013, the ASEAN created a pool of 1.7 million to 6.5 million (possibly more) internal migrants, and could dethrone Europe as the region with the most migrants.<sup>68</sup> Though the pool of outbound workers is for the most part low-skilled, a report from the Migrating for Work Research Consortium estimates that this may be a positive thing in the Asian context: for instance, to populate rural areas and to support enlarged Asian economies.<sup>69</sup> However, and this is part of the paradox, ASEAN has formalised skilled worker mobility but not unskilled workers' mobility. This choice was criticised Pranoto Iskander and Nicola Piper in a recent paper. They state:

‘Burying the reality of low-skilled migration under the carpet is both jeopardizing for the project of regionalism in the long run and morally deplorable at the same time. Nevertheless, should ASEAN be serious with progressing to shift away from pure elitism, it makes sense now to start treating this population as one of the important facets of the regional project.’<sup>70</sup>

Nonetheless, it appears that low-skilled workers migration is happening in practice anyhow through the ASEAN and somewhat legally, depending on the unilateral policy chosen by the host state.<sup>71</sup>

The ASEAN members have been committed to establishing a structural

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<sup>65</sup> Martin, Philip and Abella, Manolo. ‘ILO Asia-Pacific Working Paper Series: Reaping the economic and social benefits of labour mobility: ASEAN 2015.’ *ilo.org*, 2015. Web. Jan. 11, 2018, Page 36.

<sup>66</sup> Changwe Nshimbi, Christopher and Lorenzo Fioramonti. Ibid, Note 31, Page 38.

<sup>67</sup> Jovanovic, Miroslav N. Ibid, Note 19, Page 16.

<sup>68</sup> United Nations, ‘International migration and development: Report of the Secretary General on Globalization and Interdependence’, *www.un.org*, July 25. 2013. Web. Jan.11, 2018, Page 5.

<sup>69</sup> Desierto, Diane A. Ibid, Note 60(2), Par. 270.

<sup>70</sup> Iskandar, Pranoto and Nicola Piper. ‘Why Low-Skilled Migration Matters.’ *The Indonesian Journal of International & Comparative Law* 3 (2014): 577-581. *Hein Online*. Web. Jan. 14, 2018, Page 581.

<sup>71</sup> International Labour Organisation (ILO). ‘Labour mobility in ASEAN: Current commitments and future limitations.’ *apmigration.ilo.org*, May 15 2016. Web. Nov. 7, 2017; Yue, Chia Siow. ‘Free Flow of Skilled Labour in the AEC’, in Urata, S. and M. Okabe (eds.), *Toward a Competitive ASEAN Single Market: Sectorial Analysis.* *ERIA Research Project Report* 3 (2010): 205-279, Page 225.

framework in their endeavours, not so far removed from the GATS model.<sup>72</sup> They have also signed an intra-ASEAN Memorandum of Understanding to improve immigration proceedings, requirements and duration of stays among the ASEAN.<sup>73</sup> Through the years, the emerging ASEAN law and more than 313 treaties signed within the ASEAN gave birth to the 2008 ASEAN Charter. This Charter has been implemented in the members' jurisdictions.<sup>74</sup>

Despite these impressive developments in a short amount of time, attempts of both the Thai and Malay governments (popular inbound destinations) have failed to protect migrant workers, either because of restrictive barriers to mobility but also due to difficulty securing identity documents, as in the ECOWAS experience. The Thai government eventually resorted to amnesties for undocumented workers at numerous times over the years, but nonetheless, most could not legitimise their status due to the impossibility of verifying their nationality.<sup>75</sup> Malaysia reports more success in regularising irregular migrant workers, with declared workers going from 242 000 in 1990 to 1.9 million in 2008, though up to another million may still be in an irregular situation. Reasons for the perpetuation of the problem are attributed to porous borders and the shared history between neighbouring Asian countries.<sup>76</sup> These problems of identity verification have resulted in perpetuating illegality in the ASEAN region despite the premise that at least skilled citizens of member states are entitled to work in a fellow member state country. In other cases, such as the one of workers from Myanmar in Thailand, pending identity verification barred many from work insurance and social security benefits.<sup>77</sup>

Moreover, the ASEAN member countries are determined to improve the domestic implementation of ASEAN legislation and directives and to follow suit with international labour migration standards through instruments such as the

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<sup>72</sup> Jurje, Flavia and Sandra Lavenex. 'ASEAN Economic Community: what model for labour mobility?' *www.nccr-trade.org*, 2015. Web. Jan. 11, 2018, Page 4.

<sup>73</sup> Jurje, Flavia and Sandra Lavenex. Ibid, Note 72, Page 9

<sup>74</sup> Desierto, Diane A. Ibid, Note 60(2), Par. 285.

<sup>75</sup> International Labour Organisation (ILO). 'Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries.' *un-act.org*, 2015. Web. Nov. 7, 2017, Page 5.

<sup>76</sup> Kanapathy, Vijayakumari. *Controlling Irregular Migration: the Malaysian Experience*. Bangkok: International Labour Organisation, 2008. Print, Page 9

<sup>77</sup> International Labour Organisation (ILO). 'Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries.' Ibid, Note 76, Page 1

International Labour Organisation (hereafter ILO) Conventions. In a report from the Pacific Economic Cooperation Council, there are indeed problems in recruitment procedures and a culture of impunity of employers that must be corrected in the ASEAN.<sup>78</sup> To tackle this issue, a Declaration on the Protection and Promotion of the Rights of Migrant Workers was adopted in 2007 by ASEAN countries, and a committee to monitor its enforcement was established; a novelty in a region where human and labour rights are not as prominent as in other jurisdictions.<sup>79</sup>

Despite these challenges, ASEAN concludes to the benefits of further facilitating labour mobility, and appears serious about improving the movement of foreign workers, including unskilled workers.<sup>80</sup> Speaking of Asia as a whole, a publication by the Asian Development Bank Institute, however, notes the difficulty in matching supply and demand.<sup>81</sup> Other reports highlight that, beyond a commitment to improve unskilled migrations, there are still barriers to the mere movement of ASEAN citizens because some ASEAN countries often enter more generous partnerships with other countries than their fellow ASEAN member states.<sup>82</sup> There is therefore a great need to improve access of unskilled workers to the programme, access to documentation, and the rights of workers before massive irregular migrations from Myanmar and Laos, for instance, can truly be tackled.<sup>83</sup>

The ASEAN experience, involving the most populous RTA of the developing world, is of high interest for further research. Deeper integration efforts have been estimated to possibly yield a 5.3% growth among member states, though the magnitude of the integration effort is ‘comparable in scale and difficulty to that of European integration.’<sup>84</sup>

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<sup>78</sup> Wickramasekara, Piyasiri. ‘The Views of the International Labor Organization.’ *www.pecc.org*, 2008. Web. Nov. 7, 2018, Page 13.

<sup>79</sup> Opeskin et al. Ibid, Note 12, Page 369

<sup>80</sup> Rother, Stefan. ‘Labour Mobility and the ASEAN Economic Community.’ *www.oav.de*, German Asia-Pacific Business Association, 2014. Web. January 11, 2018.

<sup>81</sup> Asian Development Bank Institute. ‘Labor Migration, Skills & Student Mobility in Asia.’ *fr.scribd.com*, 2014. Web. January 11, 2018. Page 29.

<sup>82</sup> Jurje, Flavia and Sandra Lavenex. Ibid, Note 72, Page 12.

<sup>83</sup> Anukoonwattaka, Witada and Adam Heal. ‘Regional Integration and Labor Mobility : Linking Trade, Migration and Development.’ *www.unescap.org*, 2014. Web. January 11, 2018, Page 45.

<sup>84</sup> Petri, et al. ‘ASEAN Economic Community : A General Equilibrium Analysis’, *Asian Economic Journal* 26.2 (2012): 93-118. *Wiley Online*. Web. Feb. 1, 2018, Page 102.

### **3.4. Europe**

The European continent's most famous mobility programme is undoubtedly the European Union (hereafter EU). Europe progressively moved from customs to political union as a way to 'foster common interests among the major European powers in order to prevent the outbreak of a new war among them, and to band together in the face of the threat of possible war with the Soviet Union.'<sup>85</sup> In parallel to the EU, Scandinavian countries have also set in motion their own agreement, the Common Nordic Labour Market, which unites Denmark, Finland, Iceland, Norway and Sweden. This agreement allows Nordic citizens to live and work within the countries of the signatories. Given the similarities between this agreement and the European Union, at least in terms of labour mobility, which is straightforward in both, we will focus on the EU.<sup>86</sup>

The EU is probably the best-known regional trade agreement facilitating mobility and is also one of the oldest and most integrated ones, with the Rome Treaty establishing the EU common market dating as far back as 1957 and a European Parliament that EU citizens can elect directly from 1979 onward.<sup>87</sup> In 1973, when three more countries (Denmark, Ireland and the United Kingdom) joined in, followed by Greece in 1981<sup>88</sup>.

In its own way, the EU was a visionary when it comes to the free movement of workers, enabling the four freedoms for the movement of money, people, goods and services made official in 1993 with the creation of a single market via the Maastricht Treaty on European Union.<sup>89</sup> This free movement of workers is now formally encompassed in Section 39 of the Treaty of Nice (2003) and by the creation of the borderless Schengen zone beyond the EU itself, now comprising 27 states.<sup>90</sup> The European Union has the most advanced labour market among regional

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<sup>85</sup> Van Grastek, C., Ibid, Note 27, Page 20.

<sup>86</sup> Howard Gron, Caroline and Peter Nedergaard. *The Nordic Countries and the European Union – Still the European Community ?* London : Routledge, 2015. Print, Page 1.

<sup>87</sup> Maas, Willem. 'The Origins, Evolution, and Political Objectives of EU Citizenship.' *German Law Journal* 15.5 (2014): 798-820, Page 800.

<sup>88</sup> EUROPA. 'History of the European Union.' [www.europa.eu](http://www.europa.eu), 2018. Web. Feb.3, 2018

<sup>89</sup> EUROPA. Ibid, Note 88.

<sup>90</sup> European Union, 'Treaty of Nice, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts.' [www.refworld.org](http://www.refworld.org), Official Journal C 80 of 10 March 2001, 2001/C80/01, 11 Dec. 2000. Web. Jan. 15, 2018



trade agreements.<sup>91</sup> Though previous years have shown the problems associated with the absence of a common policy on migration outside the EU and the existence of many detractors, it is seen overall as a major achievement and successful integration effort.<sup>92</sup>

Interestingly enough, migration within the EU has been lower than expected.<sup>93</sup> There is a phenomenon of stagnation in the movement of internal migration though, possibly due to different financial and labour conditions. Indeed, migrant workers within the EU account for 3.6 per cent of the labour force, a rather modest number.<sup>94</sup> Indeed, an assessment by Yves Pascouau deems that labour mobility within the EU reduced employment inequality and labour shortages, increased competitiveness and job opportunities and has helped to develop a shared identity. However, he argues that the intra-EU mobility remains (too) low.<sup>95</sup> This may be due to language differences, certainly an impediment despite the skill set of the prospective immigrant.<sup>96</sup>

Many detractors of the European Union also point to adverse effects on the labour market created by competition for low-skilled work, to which a study from Harvard University responds with the following observations, which are also relevant at the international level:

‘The likelihood and magnitude of adverse labour market effects for natives from immigration are substantially weaker than often perceived. Within the large empirical literature looking at the effects of immigration on native employment and wages, most studies find only minor displacement effects even after large immigrant flows. On the other hand, some more recent studies have found larger effects, and many studies note that the negative effects are concentrated on certain parts of the native population. The parts of the population most typically affected are the less-educated natives or the earlier

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<sup>91</sup> Zogo Nkada, Simon-Pierre. ‘La libre circulation des personnes : réflexions sur l’expérience de la C.E.M.A.C. et de la C.E.D.E.A.O.’ *Revue internationale de droit économique* 25.1 (2011): 113-136, Par. 1.

<sup>92</sup> Pascouau, Yves. ‘Intra-EU mobility: the “second building block” of EU labour migration policy.’ *www.epc.eu*, European Policy Centre, 2013. Web. Jan. 15, 2018, Page 7.

<sup>93</sup> Aiginger, Karl and Gernot Hutschenreiter. *Economic Policy Issues for the Next Decade*. Boston : Springer, 2003. Print, Page 27; Wihtol de Wenden, Catherine. *La Question migratoire au XXI<sup>e</sup> siècle*. Paris: Les Presses de Sciences Po, 2010. Print. Par. 59

<sup>94</sup> Pascouau, Yves, Ibid, Note 92, Page 15.

<sup>95</sup> Pascouau, Yves, Ibid, Note 92, Page 15.

<sup>96</sup> Galgoczi, Béla and Janine Leschke. *EU Labour Migration in Troubled Times: Skills Mismatch, Return and Policy*. 2012, London: Routledge. Print, Page 8.

immigrant cohort that is, those who are the closest substitutes to the new immigrant now currently experienced by Europe.’<sup>97</sup>

Moreover, Europe is recovering from an economic crisis that had the consequence of creating migrants (including fellow Europeans) as scapegoats and gave rise to a negative political climate, despite immigrants being the primary victims of the economic crisis.<sup>98</sup> This negative political climate is an inevitable manifestation of an inefficient international framework on labour mobility. In this regard, Stephen Kim Park has enlightening words:

‘This global institutional vacuum comes at a significant cost. As the European migration crisis shows, countries may be increasingly ill-equipped to deal with influx of migrants that threaten to overwhelm border controls and domestic political systems.’<sup>99</sup>

As of 2007, EU countries have adopted several key directives and regulations on the theme of migration, but most of them are limited to general principles to leave as much sovereignty as possible to EU members to regulate this delicate matter. Consequently, even before the whirlwind of previous years following a sharp rise in migrations to Europe, Maxime Tandonnet had already noted a duality between ‘the left hand handing powers to Europe and the right hand taking them away in a permanent and schizophrenic-like game’ when it comes to regulating immigration in Europe.<sup>100</sup>

### **3.5. North America**

The most important regional trade agreement for labour mobility in North America is the North American Free Trade Agreement (NAFTA), entered in 1994 between the United States, Canada and Mexico and echoing the 1988 Canada-

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<sup>97</sup> Kerr, Sari Pekkala and William R. Kerr, ‘Economic Impacts of Immigration: a Survey’, [www.nber.org](http://www.nber.org), National Bureau of Economic Research, Jan. 2011. Web. Jan. 15, 2018, Page 24.

<sup>98</sup> Pascouau, Yves. Ibid, Note 92, Page 5; Munz, R. et al., ‘What are the migrants contribution to employment and growth? A European Approach,’ [www.oecd.org](http://www.oecd.org), Migration Research Group, 2007. Web. Jan. 12, 2018, Page 16.

<sup>99</sup> Park, Stephen Kim. ‘Special Economic Zones and the Perpetual Pluralism of Global Trade and Labor Migration.’ *Georgetown Journal of International Law* 46 (2016): 1379-1429, Page 1381.

<sup>100</sup> Our translation, from Tandonnet, Maxime. *Géopolitique des migrations – La Crise des Frontières*. Paris: Ellipses, 2007. Print. Page 108.

United States Free Trade Agreement (CUFTA).<sup>101</sup> The CUFTA preceded the GATS and set a significant precedent in the international mobility system for better or worse, as ‘it is not a customs union and avoids any hint of supranationality’.<sup>102</sup> NAFTA’s primary goal was to fuel trade in goods exchanged between the three countries – and indeed they have more than quadrupled to US\$ 350 billion in less than ten years between Mexico and the US. Mexican manufactured goods exported to Canada and the US also multiplied by 16. However, irregular migration has also been on the rise, though this may be more attributable to the rising US economy as the Mexican economy was dipping.<sup>103</sup>

NAFTA also facilitates the flow of business workers by eliminating exhaustive labour certifications, quotas and by harmonising the immigration procedures, all in a system exceeding the GATS Mode 4.<sup>104</sup> This agreement preceded the entry into force of the GATS and consequently has an unusually narrow framework, with targeted jobs limited to four skill categories (business visitors, traders and investors, intra-company transferees and professionals) and in which the workers are expected to engage only temporarily.<sup>105</sup> NAFTA has what has been described as ‘the most elaborate labour provisions’, with the North American Agreement on Labour Cooperation calling for ‘high standards’, though no definition of what ‘high’ means is outlined in the Agreement.<sup>106</sup>

The programme is popular with Canadian and Mexican professionals coming into the United States with job offers. Numbers speak for themselves as to its popularity, with NAFTA visa (TN visas in the United States) holders rising from 85 142 in the US territory in 2007 to 899 455 in 2011.<sup>107</sup> Initially, the US had set a maximum quota of Mexican NAFTA workers at 5 500, though it was uncapped in

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<sup>101</sup> NAFTA. ‘North American Free Trade Agreement.’ *www.international.gc.ca*, 32 I.L.M. 289 and 605 (1993). Web. Jan. 15, 2018; OECD, *Migration for Employment Bilateral Agreements at a Crossroads*. Paris: OECD Publishing, 2004. Print. Page 105.

<sup>102</sup> De Mestral, Armand. ‘NAFTA : The Unfulfilled Promise of the FTA.’ *European Law Journal* 17.5 (2011) : 649-666. *Wiley Online*. Web. Jan. 31, 2018, Page 1.

<sup>103</sup> Martin, Philip and Abella, Manolo. Ibid, Note 65, Page 14.

<sup>104</sup> Jurje, Flavia and Sandra Lavenex. Ibid, Note 72, Page 18.

<sup>105</sup> Nelson, Julia. ‘Current regimes for temporary movement of Service Providers.’ *www.wto.org*, Joint WTO - World Bank Symposium on Movement of Natural Persons (mode 4) under the GATS, 2002. Web. Jan.12, 2018, Par. 24.

<sup>106</sup> Lippoldt, Douglas. *Policy Priorities for International Trade and Jobs*. Paris : OECD Publishing, 2012. Print. Page 292.

<sup>107</sup> Lane, Mark. *Legal and Illegal Immigration*. Detroit: Gale, 2014. Print, Page 51.

2004.<sup>108</sup> Canadian analysts have attempted to explain why the movements of workers appear to be primarily to the United States and ‘career development opportunities’ and ‘intra-corporate transfers related to trade and investment adjustments’ were found to be the major reasons for Canadian professionals moving south across the border.

The NAFTA programme is tightly governed by the issuance of visas with fixed duration and the processing on the United States’ side is different depending on whether the applicants are from Canada or Mexico.<sup>109</sup> This has led observers to conclude that RTAs operating in such a way are often discriminatory.<sup>110</sup> Moreover, though TN-visa holders from both Canada and Mexico have risen over the years, many impediments restrict the functionality of NAFTA when it comes to labour mobility.<sup>111</sup> For instance, spouses and children of TN-visa holders do not have the right to work in the United States, while United States residents or citizens do not face the same restrictions in Canada and Mexico.<sup>112</sup> The NAFTA agreement is therefore both discriminatory and non-reciprocal.

However, NAFTA does have another innovative component beyond its North-South nature, and that is a ‘ground-breaking’ compulsory procedure of dispute settlement. This system, entrenched in Chapter 20 of the Agreement, was overshadowed through the years with the adoption of the Dispute Settlement Understanding of the WTO.<sup>113</sup> On another angle, this use of the WTO as an overreaching body above the RTA that is NAFTA is an interesting precedent for pushing the superior rank of the WTO in the legislative hierarchy on labour mobility – as discussed further in Section 5.

NAFTA is one of the rare multilateral regional agreements in a North-South partnership on labour mobility, and some have assessed that it generated growth

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<sup>108</sup> OECD. Ibid, Note 82, Page 105; Cattaneo, Olivier and Michael Engman. *International Trade in Services: New Trends and Opportunities for Developing Countries*. Washington D.C.: World Bank Publications, 2010. Print. Page 38.

<sup>109</sup> Martin, Philip and Abella, Manolo. Ibid, Note 66, Page 13.

<sup>110</sup> Nsour, Mohamed F. ‘Regional Trade Agreements in the Era of Globalization: a Legal Analysis.’ *North Carolina Journal of International Law and Commercial Regulation* 33 (2008): 259-436, Page 366.

<sup>111</sup> Harris, Richard and Nicolas Schmitt. ‘The Consequences of Increased Labour Mobility within an Integrating North America.’ *ist.psu.edu*, 2001. Web. Jan. 12, 2018, Page 1.

<sup>112</sup> Martin, Philip and Abella, Manolo. Ibid, Note 65, Page 14.

<sup>113</sup> De Mestral, Armand. Ibid, Note 102, Page 653-655.

and development for Mexico but not in terms of job creation and wages.<sup>114</sup> Moreover, the post 9/11 era has greatly affected the feasibility of the agreement, with trade infringed by concerns of millions of Mexican workers entering the United States of America illegally and the enactment of various laws with regards to border control that have substantially reduced trade and travels between was initially were *tres amigos*.<sup>115</sup> Bélanger points to ‘regional asymmetry of power, deeply ingrained attitudes towards sovereignty and idiosyncratic treaty-making practices’ as other aggravating factors.<sup>116</sup> Its future is uncertain at the time of writing and in terms of labour mobility, it is far from an advanced framework, as opposed to its provisions regarding trade in goods.<sup>117</sup>

### **3.6. Central and South America**

Central and South America are interesting laboratories for regional trade agreements on labour mobility but the Caribbean Community and Common Market (hereafter CARICOM) and *Mercado Comun del Cono Sur* (Southern Cone Common Market) (hereafter MERCOSUR) have led the most promising efforts on trade in services. Other agreements such as Dominican Republic-Central America FTA (DR-CAFTA) and the Andean Community also seem willing to perfect and establish a system for themselves but, like many others, only provide for visa-free travels, not visa-free work permits. It is worth mentioning that the Central and South America region is characterized by a myriad of custom unions, bilateral agreements, free trade agreements – most of which, however, do not cover services. For instance, Chile alone has fourteen free trade agreements and 45 preferential agreements with countries from Europe, America and Asia.<sup>118</sup>

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<sup>114</sup> United Nations. ‘The “New Regionalism” and North-South Trade Agreement.’ *unctad.org*, United Nations Conference on Trade and Development, 2007. Web. Jan. 14, 2018, Pages 65, 67.

<sup>115</sup> De Mestral, Armand. Ibid, Note 102, Page 660.

<sup>116</sup> Bélanger, Louis. ‘Governing the North American Free Trade Area: International Rule Making and Delegation in NAFTA, the SPP and Beyond.’ *Latin American Policy* 1.1 (2010): 22-51, *Wesley Online*. Web. Feb. 1, 2018, Page 23.

<sup>117</sup> Harris, Richard and Nicolas Schmitt. Ibid, Note 111, Pages 24, 40.

<sup>118</sup> Jovanovic, Miroslav N. Ibid, Note 19, Page 16.

## **CARICOM**

The Caribbean Community was established by the Treaty of Chaguaramas (1973) and further strengthened by forming a common market in the course of the Declaration of Grand Anse (1989).<sup>119</sup> The common market included thirteen initial signatories that were former British colonies, with Suriname and Haiti joining in afterwards.<sup>120</sup> CARICOM also ratified a ‘Revised Treaty Establishing the Caribbean Community Including the Caricom Single Market and Economy’ in 2001, which came into effect in 2006.<sup>121</sup> CARICOM has its own Protocol for the flow of skilled workers (specifically) since 1998 and has an interesting additional feature compared to other RTAs, which is the principle of national treatment of workers (but ‘providing no restriction is made by the state party’).<sup>122</sup> However, the implementation of this protocol has not been completed since 1973.<sup>123</sup>

CARICOM members share a common passport since 2005.<sup>124</sup> Additionally, and despite the regional deficit of CARICOM, the region has established the Caribbean Court of Justice acting as a supreme authority for trade disputes among the community in 2005, has adopted common standards and also established a Competition Commission (2008).<sup>125</sup> To ease the movement of workers in the community, CARICOM also adopted an Agreement on Social Security that took effect in 2007 with an official opening of the free movement of services, goods and businesses.<sup>126</sup>

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<sup>119</sup> CARICOM. ‘Treaty Establishing the Caribbean Community.’ *www.wipo.int*, 946 UNTS 17; 12 ILM 1033, Chaguaramas, Trinidad. July 4, 1973. Web. Jan. 15, 2018.

<sup>120</sup> OECD. ‘Regionalism and the Multilateral Trading System.’ *www.bilaterals.com*, Organisation for Economic Co-operation and Development, 2003. Web. Nov, 8, 2017, Page 51; Opeskin et al. Ibid, Note 12, Page 400.

<sup>121</sup> CARICOM. ‘Revised Treaty Establishing the Caribbean Community Including the Caricom Single Market and Economy.’ *www.wipo.int*. TRT/CARICOM/001, Chaguaramas, Trinidad, July 5, 2001. Web. January 15, 2018

<sup>122</sup> OECD. ‘Regionalism and the Multilateral Trading System.’ Ibid, Note 120, Page 51; Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*. Washington D.C. : Brookings Institution Press, 2010. Print, Page 12.

<sup>123</sup> CARICOM. Ibid, Note 119.

<sup>124</sup> SELA. ‘Evolution of the CARICOM integration process’, *www.sela.org*, Latin American and Caribbean Economic System, 2014. Web. Jan. 12, 2018, Page 3.

<sup>125</sup> SELA. Ibid, Note 124, Page 38; CARICOM. ‘Our Journey’. *caricom.org*, 2018. Web. Feb. 3, 2018

<sup>126</sup> SELA, Ibid, Note 124, Page 38

Despite this impressive regional system of governance, in her overview of the progress of CARICOM, Karen E. Bravo concludes that ‘commitments to labour liberalization have been limited to a small subset of CARICOM nationals.’<sup>127</sup> Indeed, the evolution of CARICOM’s mobility programme started with the initial freedom of movement of five types of workers only in 1996 (on paper but not in practice): namely, university graduates, media workers, artists, musicians, athletes and professionals. This privilege was also extended to nurses, domestic aides and teachers in 2006, and artisans, university graduates and domestic workers (aides) in 2007 to 2009, though some countries have suspended the implementation.<sup>128</sup> All in all, the Protocol II, which was supposed to set up free movement for these professions and transform CARICOM into a custom’s union, is still not in force and the information on what is or is not permitted is conflicting for the researcher – one can therefore only imagine for the citizen.<sup>129</sup>

CARICOM also has an additional procedural requirement that can be a little cumbersome. A Certificate of Recognition of CARICOM skills qualification must be obtained from the domestic labour ministry, and upon arrival in another CARICOM country, only a six-month permit will be issued until credentials verification is conducted by the home country’s labour ministry, a verification request that must be presented upon arrival.<sup>130</sup> Though some could argue that a more rigid structure is in line with global trade rules, according to Derek O’Brien, this is not a sustainable *modus operandi* in the long run because sooner or later, member states of CARICOM will have to relinquish further sovereignty for the union to evolve.<sup>131</sup> In another legal studies on CARICOM, the author notes the remaining vulnerability of the system due to lack of diversification among the market, though, as in most studies, such comments are geared towards goods rather

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<sup>127</sup> Bravo, Karen E. ‘Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?’ Ibid, Note 5, Page 90.

<sup>128</sup> International Labour Organisation (ILO). ‘Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries.’ Ibid, Note 75, Par. 24; Opeskin et al. Ibid, Note 12, Page 400.

<sup>129</sup> Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*, Ibid, Note 122(2), Page 12.

<sup>130</sup> UNU-CRIS. ‘Deepening the Social Dimensions of Regional Integration.’ *biblio.ugent.be*, UNU-CRIS Working Papers, 2008. Web. Feb. 4, 2018, Page 42.

<sup>131</sup> O’Brien, Derek. ‘CARICOM: Regional Integration in a Post-Colonial World.’ *European Law Journal* 17.5 (2011): 630-648, Par. 24.

than services.<sup>132</sup> Other issues highlighted in academic work are the difficulty to harmonise legislation given the diversity of legal traditions within the union, and the need for uniform tax policy and currency.<sup>133</sup>

All in all, despite the novelty and potential interest for CARICOM citizens to have a mobility programme available, only 9000 individuals (out of the regional population of 18 million people) had secured the ‘attestation of competency’ in 2010.<sup>134</sup>

### **MERCOSUR**

Another ongoing trade agreement and common market with labour mobility provisions in South America is the *Mercado Comun Del Sur* (MERCOSUR). Established in 1991 by the Treaty of Asunción between Argentina, Brazil, Paraguay and Uruguay, MERCOSUR also welcomed new state members, namely Bolivia (1996), Peru (2003) and Colombia and Ecuador (2004).<sup>135</sup> It started off as a common market and progressively added migration programmes, which took place only in the 2000s.<sup>136</sup> It represents over US\$ 1000 billion in GDPs combined and more than 210 million residents and is one of the strongest trading blocks after NAFTA and the EU.<sup>137</sup>

A report from the Special Rapporteur on the Human Rights of Migrants concluded that MERCOSUR has enhanced economic and cultural integration along

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<sup>132</sup> McLean, Sheldon and Jeetendra Khadan. ‘An assessment of the performance of CARICOM extraregional trade agreement.’ *repositoria.cepal.org*, Eclac Subregional Headquarters for the Caribbean, 2015. Web. Jan. 12, 2018, Page 10.

<sup>133</sup> Malcoms, Christopher P. ‘Caribbean Integration Within the CARICOM Framework: The Socio-historical, Economic, and Political Dynamics of a Regional Response to a Global Phenomenon.’ *Law and Business Review of the Americas* 10 (2004): 35-64, Page 58.

<sup>134</sup> Opeskin et al. Ibid, Note 12, Page 400.

<sup>135</sup> MERCOSUR. ‘Treaty establishing a Common Market (Asunción Treaty) between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay.’ *www.wipo.int*, Asuncion: Paraguay, 26 March 1991. Web. Jan. 15, 2018; Baer, Werner et al., ‘Economic Integration without Policy Coordination; the case of MERCOSUR’, *Emerging Markets Review* 3 (2002): 269-291. *Science Direct Online*. Web. Nov. 9, 2017, Page 271.

<sup>136</sup> Opeskin et al. Ibid, Note 12, Page 448.

<sup>137</sup> Santander, Sebastian. ‘The European Partnership with Mercosur: a Relationship Based on Strategic and Neo-liberal Principles.’ *Journal of European Integration* 27.3 (2005): 285-306. *Taylor and Francis Online*. Web. Jan. 14, 2018, Page 291.



with social security among the union.<sup>138</sup> Another report also sums up this achievement:

‘MERCOSUR has turned an area of low mutual confidence and historical rivalries into an area where inter-state violence has been ruled out, international cooperation has become the norm and high-tension controversies have ceased to exist.’<sup>139</sup>

In terms of numbers, the first seven years of the MERCOSUR tripled intra-regional trade and the increase was shown in trade creation, which is even more ‘remarkable’ than trade diversion.<sup>140</sup> On the other hand, disparities in macroeconomic policies, such as failure to coordinate exchange rates among the MERCOSUR countries have caused price fluctuations that have negatively affected trade benefits.<sup>141</sup> Indeed, through the years, MERCOSUR went through many challenges. Firstly, Coffey draws similarities between the power imbalance of France and Germany in the EU with Argentina and Brazil in MERCOSUR, who also happen to be the first beneficiaries of the intra-MERCOSUR trade.<sup>142</sup> As ‘increasing divergence in the economic and political aims’ of some countries rose, various countries manipulated their tariffs at the regional level as forms of anti-dumping measures.

Once the heat of an initial tense period in which Argentina underwent an economic crisis (1999) was over, there was a shift of mentality to reinforce integration. There was a push for more implementation of the MERCOSUR legislation, for more economic fiscal policy coordination and to promote trade in the region in the form of infrastructure building.<sup>143</sup> However, this push was put to the test again, with an economic crisis in Brazil this time in the mid-2000s.<sup>144</sup> All

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<sup>138</sup> United Nations. ‘Report of the Special Rapporteur on the Human Rights of Migrants on the Impact of Bilateral and Multilateral Trade agreements on the Human Rights of Migrants.’ *eafor.org*. Human Rights Council 32nd Session, 4 May 2016. Web. Jan. 12, 2018, Page 13.

<sup>139</sup> Malamud, Andrés. ‘Mercosur Turns 15: Between Rising Rhetoric and Declining Achievement.’ *Cambridge Review of International Affairs* 18(3) (2005) : 421-436. *Taylor and Francis Online*. Web. Nov. 9, 2017, Page 426.

<sup>140</sup> Malamud, Andrés. *Ibid*, Note 139, Page 427.

<sup>141</sup> Baer, Werner et al. *Ibid*, Note 135(2), Page 270.

<sup>142</sup> Coffey, P. *Latin America : Mercosur*. Boston : Springer Science and Business Media, 2013. Print. Pages 9, 15.

<sup>143</sup> Grant, Andrew J. et al. *The Ashgate Research Companion to Regionalisms*. Farnham : Ashgate Publishing, 2013. Print, Page 181.

<sup>144</sup> Grant, Andrew J. et al. *Ibid*, Note 143, Page 181.

in all, years onward, these problems of coordination due to “extremely weak” institutional structures’ and ‘the desire of members states to maintain national control over the integration process’ are still pervasive issues in MERCOSUR.<sup>145</sup> To tackle this problem, a Permanent Review Tribunal (the *Tribunal Permanente de Revision*) was established to rule on MERCOSUR interpretation issues, though no right of individual petition is available to seize it.<sup>146</sup> Nonetheless, according to Laura Gomez-Mera, MERCOSUR still routinely struggles with diplomatic conflicts, making it a “fractious” and “unsteady” political alliance’.<sup>147</sup>

However, this capacity of resilience of MERCOSUR may set an example for other RTAs, according to Mahruck Doctor:

‘Given the current crisis in the Euro-zone area, the Mercosur case, with its demonstrated ability to survive crises, has added relevance. The EU crisis has highlighted issues related to the continued preference for inter-governmentalism to preserve national autonomy, and exposed the weak character of supra-national institutions and the conditional nature of adherence to genuinely multilateral governance structures.’<sup>148</sup>

Trade in services was formalized and facilitated in 1997 with the Protocol on Services of Montevideo, with a list of service sector commitments inspired by the GATS.<sup>149</sup> MERCOSUR also established the Working Group No 10 gathering labour ministers officers, employers and unions to coordinate employment and labour issues arising from the integration of labour forces.<sup>150</sup> Since then, MERCOSUR has adopted a shared passport, along with a regional Parliament, Secretariat and Court of Appeal.<sup>151</sup> MERCOSUR also has a superior authority, the MERCOSUR Council, and decision-making bodies in the form of the Trade

<sup>145</sup> Grant, Andrew J. et al. Ibid, Note 143, Pages 181, 183.

<sup>146</sup> Grant, Andrew J. et al. Ibid, Note 143, Page 183

<sup>147</sup> Gomez-Mera, Laura. *Power and Regionalism in Latin America : The Politics of MERCOSUR*. Notre Dame : University of Notre Dame Press, 2013. Print. Page 2.

<sup>148</sup> Doctor, Mahruck. ‘Prospects for deepening Mercosur integration : Economic asymmetry and institutional deficits.’ *Review of International Political Economy* 20.3 (2013): 515-540, *Taylor and Francis Online*, Web. Feb. 3, 2018, Page 516.

<sup>149</sup> Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*. Ibid, Note 122(2), Page 9.

<sup>150</sup> Khan, Shaheen Rafi. *Regional Trade Integration and Conflict Resolution*. London: Routledge, 2008. Print, Page 28.

<sup>151</sup> Bouzas et al. ‘In-depth analysis of MERCOSUR integration, its prospective and the effects thereof on the market access of EU Goods, Services and Investment.’ *sciencepo.fr*, University of Barcelona Observatory of Globalisation, 2002. Web. Jan. 12, 2018, Page 486.

Commissions and MERCOSUR Group.<sup>152</sup> Nowadays, the MERCOSUR regime is especially generous, with the MERCOSUR visa allowing free movement along with the right to provide services for a period of four years. Treatment no less favourable is also guaranteed among citizens of the MERCOSUR.<sup>153</sup>

However, the MERCOSUR also has its own share of troubles in ensuring the respect of human rights of migrant workers. The relocation of 350 000 Paraguayans along with 250 000 Bolivians in Argentina did not go unnoticed, and their activity in the informal economy led to xenophobic sentiments, another side effect of mismanagement in migration.<sup>154</sup> To cater to this problem, the member countries adopted the Santiago Declaration on Migration Principles (2004) and have conducted the MERCOSUR Specialized Forum on migration since 2003 with a focus on capacity building, consultation, and information exchange – all on the topic of migration within MERCOSUR.<sup>155</sup> There is also active promotion to facilitate the recognition of diplomas and to integrate fellow MERCOSUR professionals as a result.<sup>156</sup>

## **4. COMPARATIVE ANALYSIS**

### **4.1. Introductory comments**

Comparing regional trade agreements is a bold endeavour, especially given the limited empirical data to document migration, and the uniqueness of each regional agreement. While most of them have made substantial achievements, Karen E. Bravo nonetheless concluded in 2008 that apart from the European Union, these RTAs are, overall, failed attempts at true labour liberalisation and rather timid and ‘half-hearted’ executions.<sup>157</sup> The ILO hypothesises that the

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<sup>152</sup> Coffey, P. Ibid, Note 142, Page 12.

<sup>153</sup> Stephenson, Sherry M. and Francisco Javier Prieto. ‘Evaluating Approaches to the Liberalization of Trade in Services: Insights from Regional Experience in the Americas.’ *www.oas.org*, Organisation of the American States, 2002. Web. Feb. 2, 2018, Page 4.

<sup>154</sup> Schierup, Carl-Ulrik et al. *Migration, Precarity and Global Governance*. Oxford : OUP, 2015. Print, Page 288.

<sup>155</sup> Opeskin et al. Ibid, Note 12, Page 448.

<sup>156</sup> Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*. Ibid, Note 122(2), Page 9.

<sup>157</sup> Bravo, Karen E. ‘Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?’ Ibid, Note 5, Page 72.

reasons for this generally include any or all of the following: ‘a lack of national implementing legislation, administrative barriers, or apparent absence of political will.’<sup>158</sup> What can be said a few years on, as we dive into 2018?

## **4.2. Mismanagement and data collection issues**

### ***Implementation issues***

The European Union has been praised as one of the most successful RTAs but it also happens to have an efficient, centralised, hierarchically superior and well-financed supervision structure. Other RTAs such as ECOWAS and ASEAN, despite their best intentions, have member countries that still have difficulty guaranteeing access to identity documents for all their citizens. Interestingly enough, the problem of identity verification, which goes hand in hand with border control, is often forgotten amidst all the noise about securitisation.<sup>159</sup>

This focus on irregular migration fails to grasp this important duality. As Taran and Geronimi highlight:

‘The predominance given to migration control in many forums is both root and reflection of fundamental impediments to rationally and effectively addressing international migration. Migration, regular and irregular, has, does and will continue to exist as inexorably as economic forces at work in a globalized economy. The international community —sometimes reluctantly— acknowledges the need to manage and regulate movements of capital, goods, technology, services, information, etc., whether through formal means or “market mechanisms”’.<sup>160</sup>

### ***Governmental fragmentation as a culprit***

The management of migration is often a competency shared between the labour and protection ministries, which is first cause of legal fragmentation and implementation issues. There is also a division between the custom authorities

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<sup>158</sup> International Labour Organisation (ILO). ‘International Labour Migration: A Right-Based Approach.’ <http://digitalcommons.ilr.cornell.edu>. International Labour Office, 2010. Web. Jan. 12, 2018, Page 198.

<sup>159</sup> Fioramonti, Lorenzo and Chris Nshimbi. Ibid, Note 20, Page 29.

<sup>160</sup> Taran, Patrick and Eduardo Geronimi. ‘Globalization, Labour and Migration: Protection is Paramount.’ [www.globalmigrationpolicy.org](http://www.globalmigrationpolicy.org), International Migration Programme, 2002. Web. Jan. 12, 2018, Page 1.

assessing the entry of services and goods (horizontal fragmentation), and by geographic imperatives of each country (vertical fragmentation), for instance when services are dealt with at the provincial, state or canton level.<sup>161</sup>

Due to such fragmentation, over the years, there has been a shift ‘transforming the framework of policy elaboration and implementation from that of labour market regulation to that of policing and national security.’<sup>162</sup> This is probably one of the reasons why domestic implementation in ECOWAS, ASEAN and CARICOM, to name only these three, still remains a problem. This prioritisation of border control over constructive immigration programmes has created a growing ‘second-class’ working class with reduced labour protections in many cases.<sup>163</sup> Another reason for this poor implementation, according to Julia Gray, is summed up in her conclusions as follows:

‘(...) International agreements are only as effective as their domestic capabilities. Specifically, the implementation gap in RTAs as well as their ability to actually generate trade that would not have otherwise been created can be explained in large part by their domestic infrastructure as well as the strength of the rule of law in member states. If these two areas are lacking, government commitments at the international level will not be effectively carried out.’<sup>164</sup>

### ***Data mismanagement***

From another angle, as outlined in the introduction, most studies share the common problem of statistical evidence to back their findings on labour migration with regard to employment, social protection, development and education. This surely goes hand in hand with both mismanagement and disinterest of some states for the international labour mobility agenda and legislation, despite pressures to get back to the table a decade ago already.<sup>165</sup>

While states remain free and sovereign to govern their labour markets as they please, data sharing on migration at the international level could help coordinate

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<sup>161</sup> Van Grastek, C., Ibid, Note 27, Page 14.

<sup>162</sup> Taran, Patrick and Eduardo Geronimi. Ibid, Note 160, Page 18.

<sup>163</sup> Taran, Patrick and Eduardo Geronimi. Ibid, Note 160, Page 7.

<sup>164</sup> Gray, Julia. ‘Domestic Capacity and the Implementation Gap in Regional Trade Agreements.’ *Comparative Political Studies* 47.1 (2014): 55–84, Sage Online. Web. Jan. 31, 2018, Page 74.

<sup>165</sup> Mattoo, Aaditya and Antonia Carzaniga, ‘Moving People to Deliver Services’, *elibrary.worldbank.org*, 2003. Web. Jan. 14, 2018, Pages 1-3.

supply and demand and to make advised decisions on migration. It would clarify, for instance, labour input and productivity, labour market policy and negotiation, and tackle irregular arrivals, forced labour and trafficking.<sup>166</sup> However, there remains a lot of work to be done at the national level. Findlay and Warren sum up the global problem:

‘Available data on services transactions show further shortcomings compared with those on manufacturing and merchandise. Only a limited number of industrialised countries collect and report services statistics at a relatively disaggregated level, while most developing countries only report data on commercial services (...). The IMF’s Balance of Payment Manual is the prime source of cross-country data on services trade, but there are many weaknesses in terms of data coverage, consistency among reporting countries, concordance and compatibility. Lack of disgregation of data and difficulties in identifying trade by origin and destination are other problems in services statistics.’<sup>167</sup>

### ***Emerging positive outcomes***

Despite the unsatisfactory and insufficient data on migration movements, many scholars have already concluded to the benefits of labour migration. There appears to be a consensus among economists that, despite the difficulties in measuring negative distortions (on national wages or fluid integration, for instance), international labour migrations can expand global output.<sup>168</sup> Moreover, the discourse on international labour mobility often rests on the premise that immigrants might stay abroad permanently, minimising the magnitude of those actually returning home in what has been coined as ‘circular migrations’.<sup>169</sup>

As Gordon H. Hanson puts it, even in cases of permanent immigration, immigrants are an asset for the country of origin. Diasporas of foreigners abroad facilitate trade channels in their new country with their former country and provide direct investments in them through remittance channels.<sup>170</sup> Literature on the positive impacts of remittances, such as enhanced economic security and poverty

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<sup>166</sup> Till, Matthias. ‘UNECE Working Paper Series on Statistics.’ [www.unece.org](http://www.unece.org). UNECE Working Paper Series on Statistics, Issue 2, Feb. 2017. Web. Jan. 12, 2018, Page 6.

<sup>167</sup> Findlay, Christopher and Tony Warren. *Impediments to Trade in Services*. London : Routledge, 2013. Print, Page 19.

<sup>168</sup> Hanson, Gordon H. ‘The Economic Consequences of the International Migration of Labor.’ *Annual Review of Economics* 1 (2009): 179-207, Page 201.

<sup>169</sup> Hanson, Gordon H. Ibid, Note 168, Page 202.

<sup>170</sup> Hanson, Gordon H. Ibid, Note 168, Page 179.

reduction worldwide seem conclusive.<sup>171</sup> However, unsurprisingly, most discussions on remittances are overshadowed by the real yet poorly documented phenomenon of brain drain, which remains a concern when discussing immigration.<sup>172</sup>

### **4.3. A take on skill restrictions**

Changing demographics means that low-skilled workers will be needed in fast-developing and developed countries. RTAs strictly encouraging skilled migration, such as CARICOM, NAFTA and ASEAN, may therefore be missing out on potential gains.<sup>173</sup> Our comparative analysis does not reflect an advantage from encouraging skilled migration only, rather the opposite. However, it is unsurprising that some RTAs use this approach to labour migration. As the ILO recommendations to ASEAN highlight:

‘It is easiest to negotiate agreements to liberalise skilled labour migration because the number of potential migrants is smaller, the economic and public finance gains to receiving countries are generally larger, and skilled migrants often generate positive externalities where they live.’<sup>174</sup>

The European Union arrangement shows that free movement of workers, whether low-skilled or skilled, can stabilise the labour market differences and even possibly increase salaries and reduce underemployment in developing countries.<sup>175</sup> We discuss this further in Section 5.2.

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<sup>171</sup> UNFPA. ‘Meeting the Challenges of Migration: Progress Since the ICPD.’ *popline.org*, International Migration Policy Programme, 2004. Web. Jan. 12, 2018, Page 33.

<sup>172</sup> World Bank (The). ‘Migration and Development, a Role for the World Bank Group.’ *pubdocs.worldbank.org*, September 2016. Web. Jan. 13, 2018, Page 37; Winters, Alan et al. ‘Liberalising Temporary Movement of Natural Persons: an Agenda for the Development Round’, *sitesource.worldbank.org*, 2002. Web. Jan. 13, 2018, Page 10.

<sup>173</sup> Karagueuzian, Charlotte and Audrey Verdier-Chouchane. ‘Taking Africa’s Irregular Migrants into Account: Trends, Challenges and Policy Options.’ *Africa Economic Brief* 5 (2014): 1-15, Page 12.

<sup>174</sup> Martin, Philip and Abella, Manolo. Ibid, Note 65, Page 17.

<sup>175</sup> Ratha, Dilip, et al. ‘Impact of Migration on Economic and Social Development: a Review of Evidence and Emerging Issues.’ *elibrary.worldbank*, 2011. Web. Jan. 13, 2018, Page 2; Dayton-Johnson, Jeff et al. ‘Migration and Employment - Promoting Pro-Poor Growth.’ *citeseerx.ist.psu.edu*. OECD, 2009. Web. Jan. 13, 2018, Pages 149-151.

#### **4.4. The ‘buddy system’: a trade liability?**

Regional trade agreements with labour mobility provisions are primarily entered into between countries with geographic proximity and similar levels of development (though, as we have seen in some cases, there are instances of economic giants within the framework such as in the ECOWAS and the EU). On the plus side, this ‘buddy system’ structure seems to have facilitated quicker integration. We can take the examples of the EU, ECOWAS, CARICOM and MERCOSUR, which have adopted passports that proudly reflect their RTA. From a socio-political perspective, it has also reduced volatility, as RTAs play a role in conflict prevention and management, reduction of security treats and, it has been argued, in helping political stability.<sup>176</sup>

This fairly new phenomenon of ‘regional passports’ is an interesting development and as Catherine Wihtol de Wenden noted, speaking of the EU citizenship, it marks a new step in migration studies. As she puts it: ‘[B]y recognizing the right to vote and the eligibility to citizenship of naturalized Europeans, Europe dissociated citizenship and nationality, something that appeared insurmountable by many jurors and politicians prior to 1992.’<sup>177</sup>

Despite transaction and political costs of entering a regional trade agreement, the overall impression is an increased competitiveness and a way for countries to be more attractive to investment and make the country more credible and protected from ‘macroeconomic instability, terms of trade shocks, trade war, resurgence of protectionism in developed countries, etc.’<sup>178</sup> Moreover, RTAs have proven to be powerful lobbies during international negotiations to make collective bargains in platforms such as the WTO.<sup>179</sup>

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<sup>176</sup> Kpodar, Kangni and Patrick Imam, ‘Does a Regional Trade Agreement Lessen or Worsen Growth Volatility? An Empirical Investigation.’ *Review of International Economics* 24.5 (2016): 949-979. *Wiley Online*. Web. Feb. 1, 2018, Page 953

<sup>177</sup> Wihtol De Wenden, Catherine. *L’immigration*. Paris: Eyrolles, 2016. Print. Page 139.

<sup>178</sup> Kritzinger-van Niekerk, Lolette. ‘Regional Integration: Concepts, Advantages, Disadvantages and Lessons of Experience.’ *www.sarpn.org*. Southern African Poverty Network, 2005. Web. Jan. 13, 2018, Page 3.

<sup>179</sup> Kritzinger-van Niekerk, Lolette. *Ibid*, Note 178, Page 2.



On the other hand, RTAs are not always trade proof. When all the countries in the RTA are developing, they all become vulnerable to trade shocks unless there is an ‘asymmetric’ power to absorb the situation – such was the case of Nigeria in ECOWAS during the oil crisis.<sup>180</sup> Indeed, RTAs are highly political and at times entered with limited consideration for repercussions on the domestic economy and politics.<sup>181</sup> Least developed countries joining an RTA are increasingly vulnerable, as Kpodar and Imam explain: ‘countries at this stage of development joining an RTA would disproportionately expose themselves to foreign aggregate demand shocks, and be more susceptible to world price fluctuations.’<sup>182</sup> They nonetheless conclude that this greater exposure to shocks may be outweighed by the benefits of RTAs such as ‘increased resilience and ability to adjust to crises’.<sup>183</sup>

Our overview suggests that in the African context, there is a fragile cost-benefit equilibrium between enhanced cooperation and trust among the RTAs as a means of preventing conflicts and among all RTAs the possibility that divergence in policy may create an economic imbalance lingers.<sup>184</sup> This may be why a new trend is to merge trade agreements with one another, though many of these alliances are still at the negotiating table. Such is the case of talks of the MERCOSUR connecting with the European Union. Moreover, and unsurprisingly, these partnerships, often referred to as ‘new regionalism’, are mute when it comes to the possibility of labour mobility.<sup>185</sup> However, a ray of hope (if not in a strict North-South dynamic) is emerging, for instance with ASEAN teaming up with Australia and New Zealand (who also share a bilateral agreement) to facilitate the movement of service suppliers, independent professionals and other skilled workers.<sup>186</sup> This issue is also discussed in Section 5.3.

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<sup>180</sup> Kritzinger-van Niekerk, Lolette. Ibid, Note 178, Page 13.

<sup>181</sup> Van Grastek, C. Ibid, Note 27. Page 9.

<sup>182</sup> Kpodar, Kangni and Patrick Imam. Ibid, Note 176, Page 953.

<sup>183</sup> Kpodar, Kangni and Patrick Imam. Ibid, Note 176, Page 954.

<sup>184</sup> Kritzinger-van Niekerk, Lolette. Ibid, Note 178, Page 3.

<sup>185</sup> Giordano, Paolo, ‘The External Dimension of MERCOSUR: Prospects for North-South Integration’, <https://publications.iadb.org>. Inter-American Development Bank, 2003. Web. Jan. 15, 2018, Page 1.

<sup>186</sup> Jurje, Flavia and Sandra Lavenex. Ibid, Note 72, Page 11.

#### **4.5. RTAs and the North-South paradigm**

##### ***North-South patterns at play***

Apart from NAFTA, which also happens to be one of the most restrictive RTAs, all of the RTAs examined are arranged in a pattern of overall ‘developing with developing’ and ‘developed and developed’ country. This phenomenon defeats the purpose of the comparative advantage theory and has led to much criticism against the GATS, seen as the culprit for failing to organise labour mobility at a global level. However, as an interesting historical side note, Marchetti and Mavroidis<sup>187</sup> studied the genesis of the GATS, and report *faux pas* from all sides in the negotiation rounds of the GATS. From polarized views on the utility of a global framework on services, to resistance of applying the non-discrimination principle to the agreement, to limited knowledge on the magnitude of trade in services and to the initial disinterest by developing countries, the process leading to the GATS was a bumpy ride. They sum it up as follows:

‘The agreement as such is no monument of clarity. Indeed, it is very much the outcome of an elaborate political compromise. The language chosen is often awkward, and it should come as no surprise that many of the disputes revolve round misunderstandings regarding the ambit of specific provisions. It is hard to imagine the GATS standing the test of time the way the GATT has done, still going strong more than 60 years after its original drafting. Yet, it is the negotiating history that we have discussed so far that explains why this has been the case: absent complex compromises, we would probably not have seen GATS in the first place. Now, the first decisive step has been taken. Future experience can make it a better, more workable document.’<sup>187</sup>

The GATS’ spirit was to break the ‘private club’ structure of trade in services, but rather did the opposite. In this regard Thornberg and Edwards do not mince their words:

‘The GATS, it is argued, is not a “development-friendly agreement”... but rather an instrument wielded by the industrialized world to

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<sup>187</sup> Marchetti, Juan A. and Petros C. Mavroidis. ‘The Genesis of the GATS (General Agreement on Trade in Services).’ *European Journal of International Law* 22.3 (2011): 689-721. *Oxford Academic*. Web. Feb. 2, 2018, Page 721.

steadily curb the chances of development of the poorest countries, through successive rounds of negotiations.’<sup>188</sup>

James Thuo Gathii appears to side with this view. Taking the case of integrated African economies, he underlines that integration of developing countries with each other might never work for the very reason that the level of development is too similar. He suggests the following:

‘The argument here is that African economies need more than the increase in market size created by a common market because the increase in market size may be marginal relative to other limitations for firms such as high production costs and very low levels of income that make the effective size of regional markets small.’<sup>189</sup>

This may also explain why a recent study concluded that RTAs entered between Organisation for Economic Cooperation and Development (hereafter OECD) countries have had more success than their non-OECD counterparts. Indeed, this study concludes that developed (and most OECD countries are developed), developing or underdeveloped countries will not react the same way to the creation of RTAs due to the ‘large differences among them’, though such differences are still premature to analyse, he argues.<sup>190</sup> Though South-South cooperation may feel more ‘natural’, efficiency gains are only truly felt in enhanced market access between the North and the South.<sup>191</sup>

### ***Potential benefits from breaking the paradigm***

Increased labour mobility has the potential to improve worldwide wealth and stabilise North-South inequalities and a small change could have major effects on this paradigm. Joel P. Trachtman reports that a 3 per-cent increase of temporary foreign workers in industrial countries could yield US\$ 150 billion in worldwide

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<sup>188</sup> Thornberg, Christopher F. and Frances L. Edwards. ‘Legal Article: Failure of Trade Liberalization: A Study of GATS Negotiation.’ *Journal of International Business & Law* 10 (2011): 325-346. *Lexis Nexis*. Web. Jan. 15, 2018, Page 345.

<sup>189</sup> Thuo Gathii, James. ‘African Regional Trade Agreements as Flexible Legal Regimes.’ *Ibid*, Note 58, Page 581.

<sup>190</sup> Kurihara, Yutaka. ‘The Impact of Regional Trade Agreements on International Trade.’ *Modern Economy* 2 (2011): 846-849. *Scientific Research Online*. Web. Jan. 31, 2018, Page 848.

<sup>191</sup> Behar, Alberto and Laia Cirera-i-Crivillé. ‘Does it Matter Who You Sign With? Comparing the Impacts of North-South and South-South Trade Agreements on Bilateral Trade.’ *Review of International Economics* 21.4 (2013): 765-782. *Wiley Online*. Web. Feb. 1, 2018, Page 767.

GDP, which would surpass the goals of the Doha Round, and by 2025, could reach a US\$ 356 billion increase in total.<sup>192</sup> Indeed, authors have already coined a term based on the theory that migrant workers raise GDP, ‘immigration surplus’, essentially the positive impact of immigration on the pre-existing population.<sup>193</sup>

As discussed above, migrant workers from developing countries can have positive ‘feedback’ effects, including the transmission of remittances or by returning to their country of origin with added knowledge, networks and methods.<sup>194</sup> Remittances, essentially the transmission of money from one relative to another, is already a major phenomenon that doubled between the 2000s and the mid 2010s, and remittances to developing countries were sitting at US\$ 429 billion in 2016, nearly the equivalent of the whole of Belgium’s GDP.<sup>195</sup>

A rearrangement between the North and South RTAs would also deter the tremendous human and political costs generated by refugee management and also the market for human trafficking and smuggling.<sup>196</sup> As François Crépeau puts it: ‘most refugees would, however, wait in line and contribute some money for a meaningful opportunity of resettlement in the Global North.’<sup>197</sup> Indeed, author Karen E. Bravo also wrote a paper specifically about the entanglement of failure to liberalise trade in services and human trafficking. To tackle this issue, she proposes to approach migrants as economic agents rather than as a ‘*mal nécessaire*’ and to add an Annex to the Agreement Establishing the World Trade Organisation to have an agreement on trade in labour specifically.<sup>198</sup>

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<sup>192</sup> Trachtman, Joel P. ‘The Role of International Law in Economic Migration.’ *law.nyu.edu*. Society of International Economic Law - Working Paper No 24/08 Geneva Inaugural Conference, 2008. Web. Jan. 13, 2018, Page 1; Trachtman, Joel P. *The International Law of Economic Migration: Toward the Fourth Freedom*. Kalamazoo: Upjohn Institute, 2009. Print, Page 8.

<sup>193</sup> Munz R. et al. Ibid, Note 98(2), Page 13.

<sup>194</sup> Trachtman, Joel P. ‘The International Law of Economic Migration: Toward the Fourth Freedom.’ Ibid, Note 192(2), Page 58.

<sup>195</sup> Pew Research Center. ‘Remittance Flows Worldwide in 2015.’ *pewglobal.org*, August 31, 2016. Web. January 13, 2018; World Bank (The). ‘Trends in Migration and Remittances 2017.’ *worldbank.org*, April 21, 2017. Web. Jan., 13, 2018; World Bank (The). ‘GDP (current US\$).’ *dataworldbank.org*, 2017. Web. Jan. 13, 2018.

<sup>196</sup> Trachtman, Joel P. ‘The Role of International Law in Economic Migration.’ Ibid, Note 192(1), Page 16.

<sup>197</sup> Crépeau, François. ‘From Enforced Closure to Regulated Mobility: The Need for a Paradigm Shift in Migration Policies.’ *www.ryerson.ca*, Ryerson Centre for Immigration and Settlement, May 2015. Web. Jan. 15, 2018, Page 7.

<sup>198</sup> Bravo, Karen E. ‘Free Labor! A Labor Liberalization Solution to Modern Trafficking of Humans.’ *Transnat'l L. & Contemp*, 18 (2009): 545-616, Par. 549.

Authors who have studied labour liberalisation indeed link illicit migration networks with the obstruction of trade in services and generalised neglect of ‘the movement of labour (people) attempting to respond to the economic incentives and disincentives arising from trade liberalization and the forces of globalization.’<sup>199</sup> There are studies to quash the North-South paradigm in labour mobility and reduce the barriers to trade in services, but such barriers need to be studied at the grassroots level further, because they are found in the administration, legislation or directives of each country at the national level.<sup>200</sup>

The World Bank estimated in 2006 that the entry of 14.2 million skilled and low-skilled workers in high-income countries could yield global income gains of 0.6 per cent or US\$ 356 billion.<sup>201</sup> A more idealistic hypothesis, in which all labour migration barriers would be removed completely as it was just two centuries ago, suggests an increase in the worldwide GDP by at least 4.3 per cent and up to 205 per cent. The disparity and imprecision of the numbers is due to the parameters used to determine the productivity of the migrant worker in terms of education and skills within the new host country, but the general conclusion is that the benefits are positive.<sup>202</sup>

The current configuration of regional trade agreements shows a perpetuation the North-South divide, which has resulted in the isolation of labour markets and fails to respond to the problems that we have outlined in Section 4.2 when it comes to trade shocks. A merger between regional trade agreements between developed and developing states would solve both the demographic gaps and shortages among employers in wealthier economies and indirectly contribute to the development of emerging economies through remittance channels and reduction of the ‘excess supply of labour’ stuck in unproductive locations.<sup>203</sup> This new theory, coined as

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<sup>199</sup> Bravo, Karen E. ‘Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?’ Ibid, Note 5, Page 74.

<sup>200</sup> Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*. Ibid, Note 122(2), Page 6.

<sup>201</sup> World Bank (The). ‘Global Economic Prospects: Economic Implications of Remittances and Migration.’ *pubdocs.worldbank.org*, 2006. Web. Jan. 13, 2018, Page 31.

<sup>202</sup> Stephenson, Sherry M. and Gary Hufbauer. ‘Labor Mobility’. *Preferential Trade Agreement Policies for Development* (2011): 275-306. *World Bank Library Online*. Web. Jan. 13, 2018, Page 279.

<sup>203</sup> Trachman, Joel P. *The International Law of Economic Migration: Toward the Fourth Freedom*. Ibid, Note 192(2), Page 16; World Bank (The), ‘Migration and Development, a Role for the World Bank Group’, Ibid, Note 172(1), Page 33.

‘new regionalism’, is discussed further in Section 5.3.

#### **4.6. RTAs and the international framework**

Migrant workers are almost everywhere around the globe but the international legislation to protect, regulate and facilitate their movement is still inadequate. It is now a blend of customary law and binding and non-binding documents, with limited levels of popularity.

##### ***International frameworks to protect migrant workers***

The framework to protect migrant workers is a blend of the Charter of the United Nations (1945), the ILO Convention No 97 (1947), the Universal Declaration of Human Rights (1948), the 1951 Refugee Convention, the Vienna Convention on Consular Relations (1963), the ILO Convention 143 (1975), the Convention on the Rights of Migrant Workers (1990), the various human rights treaties and the two protocols on human trafficking and migrant smuggling. The International Organisation for Migration (hereafter IOM) also plays an important role in protecting migrant workers, with its strategic expertise in and out of the field along with many NGOs.<sup>204</sup> Though some assess the IOM’s influence as limited, it remains the only non-UN international organisation specialised in migrations.<sup>205</sup>

Despite few initiatives to push for further ratification of instruments on international labour mobility, Barbara Bogusz finds the relevant conventions on migration useful for protection purposes, as imperfect as they may be:

‘These three Conventions together provide a comprehensive ‘values-based’ definition and legal basis for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards. They

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<sup>204</sup> Van Krieken, Peter. ‘Migrants Rights of the Law of the Sea: Further Efforts to Ensure Universal Participation.’ *International Migration* 45.1 (2007): 209-224, Pages 210, 2011; Trachtman, Joel P. ‘The Role of International Law in Economic Migration’, *Ibid*, Note 192(1), Page 33; International Migration and Human Rights: GMG. ‘Challenges and Opportunities on the Treshold of the 60<sup>th</sup> Anniversary of the UN Declaration of Human Rights.’ *unfpa.org*, Global Migration Group, 2010. Web. Jan.13, 2018. Pages 24, 25.

<sup>205</sup> Opeskin et al. *Ibid*, Note 12, Page 411.

are not simply human rights instruments.<sup>206</sup>

Author Ryszard Cholewinski sides with this view and deems that the legislative corpus on migration constitutes, as a whole, a form of international charter on labour migration. To consider them irrelevant due to low ratification levels is a ‘myth’ when considered as a whole, especially given that 86 of about 130 countries that are substantially affected by migration issues have indeed ratified them, he argues.<sup>207</sup>

### ***International frameworks to facilitate labour migrations***

The framework to regulate and facilitate labour migrations, on the other hand, is mostly under the auspices of the World Trade Organisation’s GATS of 1994 (the Marrakesh Agreement). This remains the only international legal instrument to facilitate labour migration on a global scale – a rather surprising (and worrisome) fact, especially given that the service sector is the most rapidly expanding industry of the world economy, sitting at 60 per cent of worldwide production in 2014.<sup>208</sup>

However, as Shin Yi Peng puts it, the GATS is ‘getting older without growing up.’<sup>209</sup> She points to outdated schedules, too few obligations and discusses the Trade in Services Agreement (TiSA), an interesting initiative of 22 WTO members (including 49 EU countries in symbolic addition) formulated in 2012 and gathering both developed and developing countries representing two thirds of the global trade in services.<sup>210</sup> TiSA is a WTO forum committed to facilitating the flow of services and may just be the ‘credible pathway to future multilateralization’ in addition to ideas proposed in this paper.<sup>211</sup> However, this initiative is still at the working table and would need a majority vote from a ‘critical mass’ of members to be incorporated in the WTO structure along with an architecture similar to the GATS.<sup>212</sup>

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<sup>206</sup> Bogusz, Barbara. *Irregular Migration and Human Rights: Theoretical, European and Human Rights*. Laiden: Martinus Nijhoff Publishers, 2004. Print, Page 279.

<sup>207</sup> Opeskin et al. Ibid, Note 12, Page 359

<sup>208</sup> Opeskin et al. Ibid, Note 12, Page 377, 378.

<sup>209</sup> Peng, Shin Yi. ‘Is the Trade in Services Agreement (TiSA) a Stepping Stone for the Next Version of GATS.’ *Hong Kong Law Journal* 43 (2013): 611-632. *Hein Online*. Web. Feb. 2, 2018, Page 612.

<sup>210</sup> Peng, Shin Yi, Ibid, Note 209, Page 613, 614.

<sup>211</sup> Peng, Shin Yi, Ibid, Note 209, Page 616.

<sup>212</sup> Peng, Shin Yi. Ibid, Note 209, Page 632.

### ***Consequences of having an inadequate framework***

Outsourcing and offshoring is an ever more popular business trend and while this can bring jobs in developing economies, Taher Ajaali's report highlights that this does not resolve scarcity of labour in industrialised countries and is not a solution accessible to smaller companies. And, while at it, the loss of tax revenues for the state as a result of outsourcing cannot be overlooked.<sup>213</sup> In the end, outsourcing could be a dissertation topic of its own, as it is a 'Catch 22' in and of itself. Indeed, Poot and Strutt note that stricter immigration policies favour outsourcing, which creates domestic job losses, but favourable immigration policies may also cause social costs – though, the debate on the latter is still live.<sup>214</sup>

The absence of a comprehensive international legal framework on labour migration is a 'true economic problem', according to Chaisse and Meng. They state:

'What is not new, but should still raise questions, is that economic migrations (concerning "migrant workers") remain, in the current period of globalization, very low in terms of relative and absolute volume. (...) In other words, goods, services, and capital are moving without much restriction while individuals remain stuck at borders or are subject to cumbersome rules.'<sup>215</sup>

Moreover, there remains an additional problem with the international labour mobility system, which is the shortage of a clear tribunal to address disputes among regional trade agreements. ASEAN, MERCOSUR and NAFTA focus on alternative resolution of such disputes as opposed to litigation in courts, but this creates problems of enforcement and 'the majority of [litigious] cases end up stalled in administrative channels created under the trade terms'.<sup>216</sup> Should regional disputes be brought to the WTO Dispute Settlement procedure in case of appeal, or, directly

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<sup>213</sup> Taher Ajaali, Tawfik. 'Labour Market and Employment Policy in Libya.' *etf.europa.eu*, European Training Foundation, 2014. Web. Jan. 13, 2018, Page 11.

<sup>214</sup> Poot, Jacques and Anna Strutt. 'International Trade Agreements and International Migration.' *The World Economy* 33.12 (2010) : 1923-1954. *Wiley Online*. Web. Jan. 31, 2018, Page 1929

<sup>215</sup> Chaisse, Julien and Lloyd Meng. 'Labor Migration in a Globalized World: The Human Journey's Challenges for International Law and Policy.' *Emory International Law Review* 31 (2016): 50-97, Page 52.

<sup>216</sup> United Nations. 'Report of the Special Rapporteur on the Human Rights of Migrants on the Impact of Bilateral and Multilateral Trade agreements on the Human Rights of Migrants.' *Ibid*, Note 138, Page 12.



when no mechanism is in place at the regional level? This is something to think about, and further debated in Section 5.3.

One may very well ask at this point, despite the vague proposition to put international labour migration legislation back on the global agenda, where do we go from here? There are difficulties in the way of any recommendations due to potential disagreement from state to state on uniform external trade barriers, because immigration arrivals come at a great political cost, especially in this day and age. In the next section, we explore a series of recommendations based on our comparative exercise and existing propositions from stakeholders in labour migrations.

## **5. RECOMMENDATIONS**

### **5.1. Introductory comments**

To open up this section after the uneven results of RTA experiences in our comparative assessment, the Global Commission on International Migration has encouraging words to approach the challenges and potential recommendations for the international labour mobility system:

‘One should not be surprised or dismayed by this situation. International migration is an emotive issue because it raises complex questions about the identity and values of individuals, households and communities, as well as societies as a whole. International migration is a controversial matter because it highlights important questions about national identity, global equity, social justice and the universality of human rights. International migration policy is difficult to formulate and implement because it involves the movement of human beings, purposeful actors who are prepared to make sacrifices and to take risks in order to fulfil their aspirations. Its challenges are radically different from those that arise in managing the movement of inanimate objects such as capital, goods and information.’<sup>217</sup>

There are plenty of recommendations on the way forward, and for the OHCHR (Office of the High Commissioner for Human Rights), it starts by outlining an

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<sup>217</sup> Global Commission on International Migration. ‘Migrating in an interconnected world: New directions for action.’ *www.iom.int*, Report of the Global Commission on International Migration, 2005. Web. January 13, 2018, Page 10.

international shared vision on migration and mobility for the 2030 Development agenda.<sup>218</sup> However, ‘promotion of labour mobility is completely off the “mainstream development agenda” as it stands.’<sup>219</sup> Thankfully, the private sector is already a pull factor, with its growing frustrations due to regulations that breach productivity and market expansion through the use of services, and in some cases, this has resulted in businesses moving offshore. As the report from the Global Commission on International Migration further states:

‘Public sector representatives complain that they are unable to offer the services expected of them because they are prevented from filling labour market gaps with authorized migrant workers. Confronted with the rigidities that exist in the global labour market, some employers have sought alternative strategies, such as transferring all or part of their enterprises to countries that can provide an adequate supply of suitable labour at an attractive price, or subcontracting to smaller enterprises that are prepared to engage unauthorized migrant workers.’<sup>220</sup>

Patterns and ideas emerging from this exercise must now be channelled into recommendations, some of which have also been exposed in Section 4.

## **5.2. Challenging the narrative on migrant workers**

### ***Skill complementarity between the North and South***

A first comment to be made on the narrative on foreign workers is that our comparative assessment above does not reflect an advantage among RTAs restricting mobility to skilled workers only. The reality is that more inclusion of foreign low-skilled workers may even be beneficial. In a recent paper by Piyasiri Wickramasekara, she examines the various studies on this specific problematic, and reports her findings that ‘the development gains from low-skilled emigration were clear cut while high-skilled emigration had more complex effects’ and that

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<sup>218</sup> OHCHR. ‘Report of the Special Rapporteur on the Human rights of Migrants.’ [www.ohchr.org](http://www.ohchr.org). 71st session. July 20, 2016. Web. Nov, 10, 2017, Page 17; International Labour Organisation (ILO), ‘International Labour Migration: A Right-Based Approach’, Ibid, Note 158, Page 148.

<sup>219</sup> Lant Pritchett and Rebekah Smith. Ibid, Note 1, Page 8.

<sup>220</sup> Global Commission on International Migration. Ibid, Note 217, Page 15.

letting in part of ‘the huddled masses into developed countries to meet labour market needs would yield tremendous benefits.’<sup>221</sup>

Many countries primarily target highly skilled workers, even though in the long run (or immediately), low-skilled workers may become essential for labour-short countries. Facilitating their arrival could fill in labour gaps and increase worldwide GDP, as discussed previously. Projected statistics show that restrictive policies on low-skilled workers ‘do not reflect actual labour market needs, being built on the myth that the demand is temporary or seasonal’.<sup>222</sup> The statistics and predictions show a very tangible and enduring need for workers of all sorts in developed economies in the future.

Indeed, one of the most common beliefs of detractors of international labour migration – almost a cliché at this point – is that immigrants will ‘steal the jobs’ of locals. This rhetoric usually rests on the premise that migrant workers might not have an economic benefit for the population and that there is no shortage of local workers to fill available positions. This line of reasoning fails to acknowledge that there are labour abundant and labour importer countries and the upcoming shortage of workers in the developing world.<sup>223</sup> Thankfully, RTAs such as the MERCOSUR and ASEAN have grasped this idea and appear to have started benefiting most from it.

In this regard, the Special Rapporteur on the Human Rights of Migrants makes the following observations:

‘Ageing populations have caused a shift in demographics that has led to labour shortages. In 2010, for the first time, more workers were retiring from the European labour market than joining it. By 2030, without changes in trends, the labour shortage in Europe is likely to rise to 8.3 million workers. At the same time, many member States have fertility rates below the rate of replacement. Similarly, by 2020, large economies such as Canada, China, the Republic of Korea and the Russian Federation will also face labour shortages.’<sup>224</sup>

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<sup>221</sup> Wickramasekara, Piyasiri. Ibid, Note 78, Page 1249.

<sup>222</sup> Wickramasekara, Piyasiri. Ibid, Note 78, Page 1250.

<sup>223</sup> David, Anda and Mohamed Ali Marouani. ‘The Impact of Labor Mobility on Unemployment: a Comparison between Jordan and Tunisia.’ *erf.org.eu*, Economic Research Forum – Working Paper No 823, December 2013. Web. Jan. 13, 2018, Page 2.

<sup>224</sup> Crépeau, François. ‘Report of the Special Rapporteur on the human rights of migrants.’ *fisp.diocesipadova.it/*, 71<sup>st</sup> Session, A/71/40767, July 20, 2016. Web. Jan.15, 2018, Par. 12.

Moreover, the predictions show that low-skilled professions in developed economies will be in great need. In this regard, Ronaldo Munck also rings the alarm:

‘The US Department of Labour projections show that more than 50 of new jobs in the top 25 occupations will occur in this category. Similarly EU projections of labour demand show that the demand is not short-term or temporary. ... At the same time many native workers shun certain occupations as incomes and living standards rise, making them immigrant-dependent sectors: agriculture, construction, cleaning, catering and other hospitality services, tourism, care work, domestic service, and the entertainment industry. The fact is that the demand for low-skilled workers cuts across all skills categories. .... This phenomenon concerns the full range of qualifications—from unskilled workers to top academic professionals.’<sup>225</sup>

Munck concludes to a complementarity between highly skilled and low-skilled professionals and it is safe to say even from this broad picture that the skilled worker as the immigrant of choice is a myth that should be revisited and sooner rather than later. As an aggravating factor, this distinction has fostered policies of discrimination, under which low-skilled workers become ‘undesirables’, in a system that runs afoul of the equality of chances principles.<sup>226</sup>

The obsession on the mobility of skilled workers is tightly rooted in a major flaw of the GATS, which is its silence when it comes to the movement of agricultural or manufacture workers for instance, and yet has detailed provisions on the movement of accountants and workers in the finance sector.<sup>227</sup> Therefore, it comes as no surprise that many trade agreements have followed suit:

‘Trade agreements often contain clauses relating to the mobility of persons, often only referring to executives and highly skilled expatriates. Such clauses need to be expanded to migrants at all skills levels and inserted in a human rights framework, which would improve their coherence and integrate rigorous due diligence, monitoring and oversight mechanisms.’<sup>228</sup>

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<sup>225</sup> Munck, Ronaldo. *Globalisation and Migration: New issues, New Politics*. London: Routledge, 2013. Print, Page 24.

<sup>226</sup> Pécoud, Antoine and Paul de Guchteneire. *Introduction: le scénario “migrations sans frontières”* in *Migration sans Frontières: Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print, Page 24

<sup>227</sup> Chaisse, Julien and Lloyd Meng, *Ibid*, Note 215, Page 95; Jurje, Flavia and Sandra Lavenex. *Ibid*, Note 72, Page 17.

<sup>228</sup> OHCHR. *Ibid*, Note 218, Page 12.

### ***The fractured system as a cause of irregular migration***

Along with questioning the focus on high-skilled worker migrations only, it may be time to consider multi-year temporary work permits for the developing world, because the system as it stands is fostering irregular migrations and visa overstays.<sup>229</sup> This, in a way, challenges another myth in the narrative on immigration which is that citizens from developing countries cannot be trusted and will overstay their time in the developed world.

Behind the well-intentioned policies of RTAs, mechanisms to ensure a smooth transition before and after integration have not been thought through in many cases and therefore most systems have failed to circumvent the most damaging and most contentious issue relating to migration, that is, irregular immigration, which moves at a far greater speed than the fractured labour mobility system:

‘Smugglers and exploitative employers are presently implementing the labour mobility that many labour markets need in order to thrive. Through creative visa opportunities for work at all skill levels, including for low- wage migrants, States could considerably reduce the number of migrants coming through irregular means or overstaying their visa or permit.’<sup>230</sup>

The failures of the GATS and of RTAs to facilitate North-South movements have indeed led some countries such as India and many South American countries to propose to fill the voids of the system with the creation of ‘GATS visas’, to propose a wider definition of what a ‘service supplier’ entails and to push for further commitments by member states.<sup>231</sup> As to the GATS visa, a gathering of OECD countries in 2004 already suggested potential benefits of introducing such a document:

‘A GATS visa would clearly separate mode 4 entrants from permanent

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<sup>229</sup> Wickramasekara, Piyasiri. Ibid, Note 78, Page 1256.

<sup>230</sup> Crépeau, François. ‘Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants.’ [www.ohchr.org](http://www.ohchr.org), General Assembly A/HRC/29/36, May 8, 2015. Web. Jan. 24, 2018, Page 13.

<sup>231</sup> Chaisse, Julien and Lloyd Meng, Ibid, Note 231, Page 96; OECD. ‘Trade and Migration: Building Bridges for Global Labour Mobility.’ [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org), 2004. Web. Jan. 15, 2018, Page 20.

migrants and result in i) reduced administrative costs, faster processing and approval; ii) fees limited to administrative costs; and iii) better records of mode 4 trade. Building safeguards and employer sanctions into the visa would prevent abuse and ensure the temporary nature of mode 4 movement.<sup>232</sup>

Additionally to considering a GATS visa, Jurje and Lavenex also suggest harmonising immigration visa requirements and procedures, and also questioning the relevance of quotas, whether in RTAs or at the international level.<sup>233</sup>

### ***Positive narratives need empirical evidence***

Labour mobility's benefits must be backed by additional empirical studies as to the alleged economic benefits of immigrants for the host country, which are not truly possible without international partnerships on data sharing. Otherwise, the narrative on immigration will remain ambiguous. Even though the WTO and the ILO recurrently recommend numerous initiatives, such as the adoption and utilisation of international labour migration databases and of common statistical standards, migration movements among RTAs are poorly documented.

The only substantial endeavour to date appears to be the Global Bilateral Migration Database of the World Bank, collecting migration patterns of 226 countries.<sup>234</sup> Initiatives have also started to take place at the regional level, for instance between Vietnam and Malaysia among the ASEAN, which have decided to share knowledge and data on inward and outward migrations, which has helped coordinate the placements of workers, a win-win situation for both countries.<sup>235</sup> This is where the international community should be heading, to fully benefit from trade facilitation in services.

In the meantime, the studies discussed strongly suggest rethinking the obsession on skill-based migration and to question assumptions about labour migration as well as migration movements as a whole.

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<sup>232</sup> Chaisse, Julien and Lloyd Meng, Ibid, Note 231, Page 16.

<sup>233</sup> Jurje, Flavia and Sandra Lavenex, Ibid, Note 72, Page 21.

<sup>234</sup> Flahaux, Marie-Laurence and Hein De Haas. 'African Migrations: trends, patterns, drivers.' *Comparative Migration Studies* 4.1 (2016) Springer. Web. Jan. 13, 2018, Page 6.

<sup>235</sup> OHCHR, Ibid, Note 218, Page 12.

### **5.3. Towards a global mobility framework**

In the end, looking at the international mobility framework on migration, there is a feeling of fragmentation, a maze in which individuals willing to work and employers in need of filling shortages have trouble connecting. RTAs on labour mobility are a manifestation of a desire to improve the system but also that the international framework on labour migration is both unpopular and inadequate, and the GATS as it stands is impersonal, too technical and an inadequate instrument to regulate migrations in services at the international level.

#### ***Bring back hierarchy in the system***

Building on what other academics have written on the subject, we see two avenues. The first one is to push for the superiority of WTO laws over RTAs legislation, with a view to avoid conflicts of laws. This could help bring back the lack of a hierarchy in the system as pointed out by Stephen Kim Park.<sup>236</sup> Indeed, if RTAs have their own dispute settlement systems yet are still supposedly under the hospice of the WTO, there seems to be a door open for forum shopping (which appears to be just what is happening in the case of NAFTA).<sup>237</sup> It also nurtures a David and Goliath structure between the least and most developed members of the RTA.<sup>238</sup> In the end though, trade disputes continue to be heard at the WTO ‘even in RTAs between partners with intensive trade flows and potentially intractable trade irritants.’<sup>239</sup>

In the context of services, the WTO superiority would also be symbolic, given that many RTAs have pushed labour mobility far beyond the GATS commitments. This new phenomenon of RTAs pushing the boundaries of the GATS studied in this paper, coined as ‘GATS-plus commitments’, may just be the new 21<sup>st</sup> century laboratory for labour mobility that is needed:

‘There is a sense that RTAs in the area of services include GATS-plus commitments that could be seen as “testing grounds” for further

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<sup>236</sup> Park, Stephen Kim, Ibid, Note 99, Page 1392.

<sup>237</sup> Froese, Marc D. Ibid, Note 28, Pages 374, 380

<sup>238</sup> Froese, Marc D. Ibid, Note 28, Page 383.

<sup>239</sup> Froese, Marc D. Ibid, Note 28, Page 387.

liberalisation. Some countries have used RTAs to lock-in domestic reforms or to reiterate obligations under the GATS. But most agreements are more ambitious and provide market access commitments in new sectors.<sup>240</sup>

### ***Who can help?***

The conservatism of labour migration policy in the worldwide trade agenda is a blind spot that has caused distortion on the global market, has failed to tackle labour as a production factor as mobile as goods and, consequently, has created an ‘atomized nation-state world view.’<sup>241</sup> Additionally, the current legal framework on labour migration is borderline incomprehensible, to a point where scholars have coined the term ‘spaghetti bowl’ to describe the overlapping provisions and the legal vacuum that remain in other themes.<sup>242</sup> It is no wonder that it shows limited popularity among RTAs.

Which international body or supervising authority should take responsibility to set up an international labour mobility scheme that actually works is open for debate, and so are the potential existing or hypothetical legal instruments to regulate it. As pointed out above, though the UN, ILO, Office of the High Commissioner for Human Rights, United Nations High Commissioner for Refugees (hereafter UNHCR), IOM, the World Bank and the OCDE grouping all already play a key role in issuing parameters and directives, only the WTO has true power enabled by proactive and ratified legislation.<sup>243</sup> It seems to remain the best platform for dialogue and negotiations on labour mobility as an economic driver.

### ***Instrumentalisation: the tribulations of the GATS***

The question remains as to how prospective international legislation on migration and UN and NGO directives may connect with existing or prospective

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<sup>240</sup> Miroudot, S. et al. *Multilateralising Regionalism: How Preferential Are Services Commitments in Regional Trade Agreements?* OECD Trade Policy Papers, No. 106. OECD Publishing, Paris, 2010. Print, Page 8.

<sup>241</sup> Bravo, Karen E. ‘Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?’ Ibid, Note 5, Page 98.

<sup>242</sup> Gosh, Bimal. *La gestion des migrations: le régime manquant* in *Migrations sans frontières: Essais sur la libre circulation des personnes*. Paris : Unesco, 2009, Page 158.

<sup>243</sup> Entzinger, Han. *L’ouverture des frontières et l’État providence* in *Migrations sans frontières : Essais sur la libre circulation des personnes*. Paris : Unesco, 2009, Page 160.



RTAs' frameworks? The timid progression of regional trade agreements on labour mobility shows a renewed interest for freer movements of service providers and, therefore, migrant workers, but the same cannot always be said of their usage of the available international legal instruments. The ASEAN and the MERCOSUR countries appear to be relying on the GATS to a certain extent, but there remains an ever-growing necessity to have a comprehensible and international plan on labour mobility tying the social conventions on migrant workers with limited popularity with the pragmatic roles that they can play as economic agents.<sup>244</sup> Indeed, service providers are rarely perceived as production agents or exporters even though they should be.<sup>245</sup>

The GATS is the only international instrument providing parameters to the temporary movement of self-employed or employed service providers, and it has a rather restrictive legal scheme.<sup>246</sup> Indeed, the GATS does not provide any policy on visas, social security and recognition of academic credentials.<sup>247</sup> Moreover, Mode 4 of trade in services, the only true commitment to labour mobility that authorises the movement of workers without a commercial presence, is operating at very modest rates:

'Mode 4 flows stand at less than 5% of world services trade, compared to 55–60% of worldwide services delivered by Mode 3 (commercial presence), 25–30% by Mode 1 (cross-border supply) and 10–15% by Mode 2 (consumption abroad).'<sup>248</sup>

Many authors have taken a closer look at Mode 4 and the GATS as a whole and conclude that the legal architecture is too technical, with insufficient definitions, to a point where it might even be misunderstood and voluntarily underused by states.<sup>249</sup> It thus appears that most countries have rejected the GATS as a platform for their immigration goals, despite its well-established structure and coercion mechanism, as opposed to bilateral and multilateral agreements with non-

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<sup>244</sup> Bravo, Karen E., 'Free Labor! A Labor Liberalization Solution to Modern Trafficking of Humans', *Ibid*, Note 198, Par. 560.

<sup>245</sup> Van Grastek, C. *Ibid*, Note 27, Page 15.

<sup>246</sup> Panizzon, Marion. *Ibid*, Note 9, Page 12

<sup>247</sup> Anukoonwattaka, Witada and Adam Heal. *Ibid*, Note 83, Page 44.

<sup>248</sup> Panizzon, Marion. *Ibid*, Note 9, Page 12.

<sup>249</sup> Panizzon, Marion. *Ibid*, Note 9, Page 15.

binding commitments.<sup>250</sup> As Anukoonwattaka and Heal put it in a recent United Nations publication:

‘The progressive liberalization of international trade through successive rounds of negotiations in the GATT and WTO has not been mirrored by any corresponding multilateral agreement on labour mobility.’<sup>251</sup>

Other authors highlight the fear of the ‘national treatment principle’ imbedded in the GATS.<sup>252</sup> Many RTAs have outright breaches of the national treatment principle such as requirements or restrictions on freedom of movement, difference in fiscal treatment, and when it comes to property access or ownership.<sup>253</sup> The same goes for the fear of the transparency, predictability and non-discrimination, core principles of the GATT. All in all, the RTA exception may have ‘eroded’ or put in doubt the beliefs of these principles.<sup>254</sup>

Additionally, according, to Thornberg and Edwards, the GATS shows the inability of the drafters to create uniform schemes on repatriation and tax treatments, to set up an enforcement mechanism and, most importantly, to logically connect it to the GATT, to a point where trade negotiations in services among the WTO and between countries with RTAs do not generate any comparative advantage.<sup>255</sup>

Therefore, it appears that it may be time for a more open and user-friendly GATS 2.0. Despite the unpopularity and fragmentation of the GATS, it remains ‘the only collective effort at liberalizing skill flows at the multilateral level.’<sup>256</sup> In Marion Panizzon’s paper for the Dialogue on Globalization of 2010, she argues that, despite its imperfections, it may play a significant role in the future, but must be redesigned to deliver a clear understanding of the advantages of using it. It must also comprise additional provisions on overstays and irregular entries and

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<sup>250</sup> Panizzon, Marion. Ibid, Note 9, Pages 10, 13.

<sup>251</sup> Anukoonwattaka, Witada and Adam Heal, Ibid, Note 83, Page 9.

<sup>252</sup> Anukoonwattaka, Witada and Adam Heal, Ibid, Note 83, Page 11.

<sup>253</sup> Miroudot, S. et al. Ibid, Note 241, Page 8.

<sup>254</sup> Jovanovic, Miroslav N. Ibid, Note 19, Page 18.

<sup>255</sup> Thornberg, Christopher F. and Frances L Edwards. Ibid, Note 188, Page 341.

<sup>256</sup> Panizzon, Marion. Ibid, Note 9, Page 8.

safeguards in case of a surge of foreign workers, to protect local economies.<sup>257</sup> Van Grastek further adds that the GATS also has gaps when it comes to provisions on subsidies and domestic regulations on services, and at the very least on governmental services. He further notes that emergency safeguards have been implemented in ASEAN and MERCOSUR, which could yield interesting studies for the purpose of GATS negotiations.<sup>258</sup> In a bold proposition by Geza Feketekuty, she even argues for the integration of the GATT with the GATS into one legal document ‘because the distinction between the two should become less important in the future’.<sup>259</sup>

### *New regionalism*

Beyond reframing the GATS according to the many suggestions outlined or via the introduction of TiSA in the WTO, the other avenue to find a logical and progressive way out of the international labour mobility labyrinth might be to invest in ‘new regionalism’, where bilateral and multilateral agreements are joined with one another.<sup>260</sup> We would be highly interested to see any two multilateral agreements discussed above finding common grounds on labour mobility. The European Union has discussed a potential partnership with the MERCOSUR.<sup>261</sup> There has also been an attempt to conclude an agreement between the EU and CARIFORUM (CARICOM signatories to the Georgetown Agreement with other Pacific Group of states (ACP)).<sup>262</sup> However, as is often the case in many arrangements among the dozens of them at the bilateral level, these potential mergers are regarding goods, not services. Nonetheless, the EU has also been negotiating with ASEAN with regard to labour mobility specifically.<sup>263</sup>

For those fearful of a flood or surge of immigrants, one can take the dreamy (but oh-so achievable) hypothesis of an agreement on labour mobility between the

<sup>257</sup> Panizzon, Marion. Ibid, Note 9, Pages 10, 11, 28.

<sup>258</sup> Van Grastek, C. Ibid, Note 27, Pages 27, 29

<sup>259</sup> Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*, Ibid, Note 122(2), Page 4.

<sup>260</sup> United Nations. ‘The “New Regionalism” and North-South Trade Agreement.’ Ibid, Note 114, Page 57.

<sup>261</sup> Santander, Sebastian. ‘The European Partnership with Mercosur: a Relationship Based on Strategic and Neo-liberal Principles.’ Ibid, Note 137, Page 3.

<sup>262</sup> Jurje, Flavia and Sandra Lavenex, ‘ASEAN Economic Community: what model for labour mobility?’ Ibid, Note 72, Page 17.

<sup>263</sup> Cattaneo, Olivier and Michael Engman. Ibid, Note 108(2), Page 56.

EU and the MERCOSUR, with the buffer zone of the Atlantic Ocean (and airplane costs) to prevent ‘immigrant floods’ (pun intended). The same goes for a hypothetical partnership between NAFTA and ASEAN and the Pacific Ocean. There would be no need for walls. Such integrated forms of cooperation on services may be the new ‘multilateralize[d] regionalism’ that we need, instead of endlessly wondering whether regionalism harms or facilitates trade or why multilateralism is not working, as Rafael Leal-Arcas highlighted in 2011.<sup>264</sup>

### ***Setting priorities***

We would argue that the most pressing need to facilitate the flow of labour to the North may be coming from the African continent, which has a surplus of low-skilled workers looking for work.<sup>265</sup> Authors Witada Anukoonwattaka and Adam Heal suggest that developing countries could trade enhanced labour market access in exchange for the commodities of the developing country.<sup>266</sup> Moreover, the tumultuous Uruguay and Doha Round of the WTO meetings recorded important debates on the possibility of trading more commercial presence (Mode 3) for developed countries in exchange for more market access for service providers (Mode 4) of developing countries.<sup>267</sup> Developing countries also requested extended stays, end visa quotas, overzealous qualification and economic need verification – all of which is still very much at the lobbying table.<sup>268</sup> It is interesting to note the change of tone through the years, given that in the 1988 Punta del Este negotiations prior to the GATS, the developing countries showed limited interest to export their workers and ‘adopted a passive – if not obstructive – attitude towards the negotiations, at least early on.’<sup>269</sup>

A report from the United Nations ten years ago already warned that North-South free trade agreements could be beneficial, unless fellow developing countries

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<sup>264</sup> Leal-Arcas, Rafael, ‘The Fragmentation of International Trade Law: is Not the Time for Variable Geometry’, *The Journal of World Investment and Trade* 12.1 (2011): 145-196, *Hein Online*. Web. Feb. 2, 2018, Page 189.

<sup>265</sup> Janta, Barbara, et al. ‘Employment and the changing labour market: Global societal trends to 2030.’ *www.rand.org*, Rand Corporation, 2015. Web. Jan. 14, 2018, Pages 1, 14.

<sup>266</sup> Anukoonwattaka, Witada and Adam Heal, *Ibid*, Note 85, Page 12.

<sup>267</sup> Dawson, Laura Ritchie, *Labour Mobility and the WTO: Limits of GATS Mode 4, International Migration* 51.1 (2015) : 1-23, *Wiley Online*. Web. Jan. 31, 2018, Page 12.

<sup>268</sup> Dawson, Laura Ritchie, *Ibid*, Note 268, Page 13.

<sup>269</sup> Marchetti, Juan A. and Petros C. Mavroidis. *Ibid*, Note 187, Page 706.

are competing over the same developed country.<sup>270</sup> What would happen if this exchange were multilateral, and most importantly, with regard to services and not only goods? One would have to wait and see. But which RTAs will be bold enough to act as a guinea pig? Our response would be that this is what pilot projects are for.

### ***Win-win or no win***

The bottom line is that as highlighted by Pécoud and de Guchteneire, a key principle in the governance of freedom of movement is that no state will unilaterally open its borders, for fear of becoming a target of dumping of foreign minorities, poor and unemployed or retired individuals.<sup>271</sup> The system as it stands demonstrates that indeed, there is little room for idealism in negotiating the movement of labour. Nonetheless, it may be time for a win-win pilot project on labour mobility between labour-short and labour-abundant RTAs, that goes beyond the conservatism of NAFTA. It only makes sense, given that ‘most of the demands in services are still made by industrialised countries’.<sup>272</sup> However, to meet this demand in the context of regional trade agreements, developing countries will have to break a pattern showing their feeble interest to include services in their existing RTAs.<sup>273</sup>

## **6. CONCLUSION**

In this paper, we have reviewed the most prominent RTAs on labour mobility and discussed their frameworks, the institutions governing them and the legal resources they have set in place for themselves, and outlined their main achievements and remaining challenges. This exercise has allowed us to move on to our most important observations, namely that many RTAs are plagued by mismanagement issues and are even, at times, fostering more irregular movements, despite many interesting initiatives such as the creation of regional structures and legal instruments and the adoption of shared passports.

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<sup>270</sup> United Nations. ‘The “New Regionalism” and North-South Trade Agreement’, Ibid, Note 114, Page 13.

<sup>271</sup> Pécoud, Antoine and Paul de Guchteneire. Ibid, Note 226, Page 40.

<sup>272</sup> Van Grastek, C. Ibid, Note 27, Page 31.

<sup>273</sup> Van Grastek, C. Ibid, Note 27, Page 33.

According to our analysis, restriction based on skill has not yielded a comparative advantage and is also fostering these irregular movements. We have also outlined the trade liabilities of associating countries with similar levels of development together, along with the consequence of perpetuating North-South paradigms once again. Finally, we have highlighted that most of the RTAs reviewed are developing their own legal frameworks, with limited interest for the available international framework or instruments, which are at best a source of inspiration for most. These observations have led us to propose to challenge many preconceived ideas on international mobility and to share our thoughts on ways forward for an international framework on mobility, such as a more inclusive GATS or enhanced 'new regionalism'.

Despite all the constructive criticism outlined in this paper, we wish to conclude on a positive note. States involved in an RTA with labour mobility provisions share the belief of a more fluid and pragmatic approach to services, and this is something that should be celebrated. Though most arrangements are nowhere near the level of integration and organisation that Europe has set up, this does not have to be a dramatic conclusion. As Andrés Malamud puts it:

‘It is now clear that institutional mimetism has not taken place, and that the EU is not yet a standard integration model but a unique phenomenon that can serve as a point of reference and inspiration but cannot be transplanted or replicated wholesale.’<sup>274</sup>

Increased labour mobility has the potential to improve worldwide wealth and stabilise North-South inequalities. There is evidence that ‘broad restrictions on migration diminish human welfare’ and that international migration therefore ‘raises gross incomes for migrants, while it redistributes incomes within sending and receiving countries’.<sup>275</sup> And it is not the only logical path for moral reasons:

‘Economically speaking, freedom of movement is potentially more rewarding than trade liberalization. For example, a study by Lant Pritchett estimated that the benefits of freeing movement are much bigger than the trade liberalization and foreign aid combined. In fact,

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<sup>274</sup> Malamud, Andrés. Ibid, Note 139, Page 429.

<sup>275</sup> Trachtman, Joel P. ‘The Role of International Law in Economic Migration.’ Ibid, Note 192(1), Page 65.

this claim has been included in the pantheon of economic orthodoxy.<sup>276</sup>

The positive effects of further service liberalization can be felt by the creation of three different channels, according to Kenneth A. Reinert. It creates a balance of payment channel (earnings, remittances and increased capital), a poverty alleviation and development channel (new jobs, increasing foreign investments) and an economic and competitiveness growth channel (facilitating production, skill transfer and building infrastructure, especially in manufacturing).<sup>277</sup> Delay in concluding a functional international law on trade in services contradicts principles of competition shared worldwide, ‘a model that betrays both trade liberalization theory and free-market principles’.<sup>278</sup>

Negotiation and confidence-building efforts between nations converging on the economic and social level seem to have facilitated numerous regional agreements on labour mobility. At the same time, looking back at the literature in migration studies of the early 2000s, some perverse effects that scholars warned us about have already started to take place. In 2009, Bimal Ghosh hypothesised that regional groupings could evolve in different directions and that tensions would ensue between countries of inbound and outbound migration.<sup>279</sup> Such appears to be the case today between the European Union, NAFTA and citizens from or reaching the ECOWAS.

In September 2016, the World Bank issued the following alarming statistic:

‘The working-age population (15+) in the developing countries will increase by 2.1 billion by 2050. If national employment is maintained at the same rate as in 2015, only 1.2 billion of those people will find employment in their own country, leaving nearly 900 million in search of work.’<sup>280</sup>

It is not too late to provide a coordinated response to this pool of workers, which is nearly 12 per cent of the world population. In the end, whether RTAs are ‘building

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<sup>276</sup> Iskandar, Pranoto and Nicola Piper, *Ibid*, Note 70, Page 579.

<sup>277</sup> Reinert, Kenneth A. *Handbook of Globalisation and Development*. Cheltenham : Edward Elgar Publishing, 2017. Print, Pages 50-52.

<sup>278</sup> Bravo, Karen E. ‘Free Labor! A Labor Liberalization Solution to Modern Trafficking of Humans.’ *Ibid*, Note 198, Par. 563.

<sup>279</sup> Kunz, Jan and Mari Laimonen. *Une Europe sans frontières: pure rétorique, réalité ou utopie dans Essais sur la libre circulation des personnes*. Paris: Unesco, 2009. Print, Page 192.

<sup>280</sup> World Bank (The). *Ibid*, Note 172, Page 11.

or stumbling blocks' as academia has coined the dilemma, a building has already taken shape.<sup>281</sup> Let us all try to keep it straight and safe.

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<sup>281</sup> Baldwin, Richard E., and Elena Seghezza, 'Are Trade Blocs Building or Stumbling Blocs?' *Journal of Economic Integration*, 25.2 (2010) : 276–297. *JSTOR*. Web. Jan. 18, 2018, Page 276.



## **BIBLIOGRAPHY**

### **PRIMARY SOURCES**

#### **Statutes**

ASEAN. 'Bangkok Declaration.' *asean.org*, Bangkok: Thailand, 8 August 1967. Web. January 15, 2018

CARICOM. 'Treaty Establishing the Caribbean Community.' *www.wipo.int*, 946 UNTS 17; 12 ILM 1033, Chaguaramas, Trinidad. July 4, 1973. Web. January 15, 2018

CARICOM. 'Revised Treaty Establishing the Caribbean Community Including the Caricom Single Market and Economy.' *www.wipo.int*. TRT/CARICOM/001, Chaguaramas, Trinidad, July 5, 2001. Web. January 15, 2018

European Union, 'Treaty of Nice, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts.' *www.refworld.org*, Official Journal C 80 of 10 March 2001, 2001/C80/01, 11 Dec. 2000. Web. Jan. 15, 2018

GATS, 'General Agreement on Trade in Services, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B', *www.wto.org*, Apr. 15, 1994, 1869 U.N.T.S. 183, 33 I.L.M. 1167. Web. January 15, 2018

MERCOSUR. 'Treaty establishing a Common Market (Asunción Treaty) between the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay.' *www.wipo.int*, Asuncion: Paraguay, 26 March 1991. Web. January 15, 2018

NAFTA. 'North American Free Trade Agreement.' *www.international.gc.ca*, 32 I.L.M. 289 and 605 (1993). Web. January 15, 2018

### **SECONDARY SOURCES**

#### **Books**

Adepoju, Aderanti. *Créer une Afrique du l'Ouest sans Frontières in Migrations sans Frontières : Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print

Aiginger, Karl and Gernot Hutschenreiter. *Economic Policy Issues for the Next Decade*. Boston : Springer, 2003. Print

Basu Das, Sanchita et Jayant Menon. *The ASEAN Economy Community : A Work in Progress*. Singapore : Institute of Southeast Asian Studies, 2013. Print

Bogusz, Barbara. *Irregular Migration and Human Rights: Theoretical, European and Human Rights*. Laiden: Martinus Nijhoff Publishers, 2004. Print

Cattaneo, Olivier and Michael Engman. *International Trade in Services: New Trends and Opportunities for Developing Countries*. Washington D.C.: World Bank Publications, 2010. Print

Coffey, P. *Latin America : Mercosur*. Boston : Springer Science and Business Media, 2013. Print

Entzinger, Han. *L'ouverture des frontières et l'État providence in Migrations sans frontières : Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print

Findlay, Christopher and Tony Warren. *Impediments to Trade in Services*. London : Routledge, 2013. Print

Fioramonti, Lorenzo and Chris Nshimbi. *Regional Migration Governance in the African Continent. Current State of Affairs and the Way Forward*. First Edition. Bonn: Stiftung Entwicklung und Frieden, 2016. <http://www.sef-bonn.org>. Web. January 15, 2018

Galgoczi, Béla and Janine Leschke. *EU Labour Migration in Troubled Times: Skills Mismatch, Return and Policy*. 2012, London: Routledge. Print

Gomez-Mera, Laura. *Power and Regionalism in Latin America : The Politics of MERCOSUR*. Notre Dame : University of Notre Dame Press, 2013. Print

Gosh, Bimal. *La gestion des migrations: le régime manquant in Migrations sans frontières: Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print

Grant, Andrew J. et al. *The Ashgate Research Companion to Regionalisms*. Farnham : Ashgate Publishing, 2013. Print

Howard Gron, Caroline and Peter Nedergaard. *The Nordic Countries and the European Union – Still the European Community ?* London : Routledge, 2015. Print

Jovanovic, Miroslav N. *International Handbook on the Economics of Integration : General Issues and regional groups*. Cheltenham: Edward Elgar Publishing, 2011. Print

Kanapathy, Vijayakumari. *Controlling Irregular Migration: the Malaysian Experience*. Bangkok: International Labour Organisation, 2008. Print

Khan, Shaheen Rafi. *Regional Trade Integration and Conflict Resolution*. London: Routledge, 2008. Print

Kunz, Jan and Mari Laimonen. *Une Europe sans frontières: pure rhétorique, réalité ou utopie dans Essais sur la libre circulation des personnes*. Paris: Unesco, 2009. Print

Lane, Mark. *Legal and Illegal Immigration*. Detroit: Gale, 2014. Print

- Lippoldt, Douglas. *Policy Priorities for International Trade and Jobs*. Paris : OECD Publishing, 2012. Print
- Miroudot, S. et al. *Multilateralising Regionalism: How Preferential Are Services Commitments in Regional Trade Agreements? OECD Trade Policy Papers, No. 106*. OECD Publishing, Paris, 2010. Print
- Mouhoud, El Mouhoub. *Les nouvelles migrations : un enjeu Nord-Sud de la mondialisation*. London : Universalis, 2006. Print
- Munck, Ronaldo. *Globalisation and Migration: New issues, New Politics*. London: Routledge, 2013. Print
- OECD, *The Future of International Migration to OECD Countries*, Paris : OECD Publishing, 2009. *Bibliothèque Nationale du Québec*. Web. January 11, 2018
- OECD, *Migration for Employment Bilateral Agreements at a Crossroads*. Paris: OECD Publishing, 2004. Print.
- OECD. *West African Studies: Regional Challenges of West African Migration*. Paris: OECD Publishing, 2009. *Bibliothèque Nationale du Québec (Online)*. Web. February 1, 2018
- Opeskin et al. *Le droit international de la migration*. Cowansville : Éditions Yvon Blais, 2014. Print
- Pécoud, Antoine and Paul de Guchteneire. *Introduction: le scénario “migrations sans frontières”* in ‘*Migration sans Frontières: Essais sur la libre circulation des personnes*. Paris : Unesco, 2009. Print
- Quayson, Ato and Antonela Arhin. *Labour Migration, Human Trafficking and Multinational Corporations*. London : Routledge, 2012. Print
- Reinert, Kenneth A. *Handbook of Globalisation and Development*. Cheltenham : Edward Elgar Publishing, 2017. Print
- Ruhs, Martin. *The Price of Rights*. Princeton: Princeton University Press, 2013. Print
- Schierup, Carl-Ulrik et al. *Migration, Precarity and Global Governance*. Oxford : OUP, 2015. Print
- Stephenson, Sherry M. *Services Trade in the Western Hemisphere: Liberalization, Integration, and Reform*. Washington D.C. : Brookings Institution Press, 2010. Print.
- Tandonnet, Maxime. *Géopolitique des migrations – La Crise des Frontières*. Paris: Ellipses, 2007. Print.
- Thuo Gathii James. *African Regional Trade Agreements as Legal Regimes*. Cambridge: Cambridge University Press, 2011. Print

Touzenis, Kristina. *Free Movement of persons in the European Union and Economic Community of if West African States: a comparison of law and practice*. Paris: UNESCO, 2012. Print

Trachtman, Joel P. *The International Law of Economic Migration: Toward the Fourth Freedom*. Kalamazoo: Upjohn Institute, 2009. Print

Van Grasse, C. *The Political Economy of Services in Regional Trade Agreements - OECD Trade Policy Papers, No. 112*. Paris: OECD Publishing, 2011. Print

Wihtol de Wenden, Catherine. *La Question migratoire au XXIe siècle*. Paris: Les Presses de Sciences Po, 2010. Print

Wihtol De Wenden, Catherine. *L'immigration*. Paris: Eyrolles, 2016. Print

### Journals

Baer, Werner et al., 'Economic Integration without Policy Coordination; the case of MERCOSUR', *Emerging Markets Review* 3 (2002): 269-291. *Science Direct Online*. Web. November 9, 2017

Baldwin, Richard E., and Elena Seghezza, 'Are Trade Blocs Building or Stumbling Blocs?', *Journal of Economic Integration*, 25.2 (2010) : 276–297. *JSTOR*. Web. January 18, 2018

Behar, Alberto and Laia Cirera-i-Crivillé. 'Does it Matter Who You Sign With? Comparing the Impacts of North-South and South-South Trade Agreements on Bilateral Trade.' *Review of International Economics* 21.4 (2013): 765-782. *Wiley Online*. Web. February 1, 2018

Bélanger, Louis. 'Governing the North American Free Trade Area: International Rule Making and Delegation in NAFTA, the SPP and Beyond.' *Latin American Policy* 1.1 (2010): 22-51, *Wesley Online*. Web. February 1, 2018

Bolarinwa, Joshua Olusegun. 'The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration.' *Insight on Africa* 7.2 (2015): 154-168

Borchet et al. 'Policy Barriers to International Trade in Services.' *The World Bank Economic Review* 28.1 (2014) :162–188. *Oxford Academic Online*. Web. February 2, 2018

Bravo, Karen E. 'Free Labor! A Labor Liberalization Solution to Modern Trafficking of Humans.' *Transnat'l L. & Contemp*, 18 (2009): 545-616

Bravo, Karen E. 'Regional Trade Arrangements and Labor Liberalization: (Lost) Opportunities for Experimentation?' *Saint Louis University Public Law Review* 28 (2008): 78-114

Chaisse, Julien and Lloyd Meng. 'Labor Migration in a Globalized World: The Human Journey's Challenges for International Law and Policy.' *Emory International Law Review* 31 (2016): 50-97

Cole, M.T., and A. Guillin. 'The determinants of trade agreements in services vs. Goods.' *International Economics* 144 (2015): 66–82. *Science Direct*. Web. January 31, 2018

Dawson, Laura Ritchie, *Labour Mobility and the WTO: Limits of GATS Mode 4, International Migration* 51.1 (2015) : 1-23, *Wiley Online*. Web. January 31, 2018

De Mestral, Armand. 'NAFTA : The Unfulfilled Promise of the FTA.' *European Law Journal* 17.5 (2011): 649-666. *Wiley Online*. Web. January 31, 2018

Desierto, Diane A. 'ASEAN'S Constitutionalization of International Law: Challenges to Evolution Under the New ASEAN Charter.' *Columbia Journal of Transnational Law* 49.2 (2011): 268-304

Doctor, Mahrukh. 'Prospects for deepening Mercosur integration : Economic asymmetry and institutional deficits.' *Review of International Political Economy* 20.3 (2013): 515-540, *Taylor and Francis Online*, Web. February 3, 2018

Flahaux, Marie-Laurence and Hein De Haas. 'African Migrations: trends, patterns, drivers.' *Comparative Migration Studies* 4.1 (2016) *Springer*. Web. January 13, 2018

Froese, Marc D. 'Regional Trade Agreements and the Paradox of Dispute Settlement.' *Manchester Journal of International Economic Law* 11.3 (2014): 367-396. *Hein Online*. Web. February 2, 2018

Geda, Alemayu and Edriss Hussein Seid. 'The potential for internal trade and regional integration in Africa.' *Journal of African Trade* 2 (2015): 19–50. *Science Direct*. Web. January 31, 2018

Gray, Julia. 'Domestic Capacity and the Implementation Gap in Regional Trade Agreements.' *Comparative Political Studies* 47.1 (2014): 55–84, *Sage Online*. Web. January 31, 2018

Hanson, Gordon H. 'The Economic Consequences of the International Migration of Labor.' *Annual Review of Economics* 1 (2009): 179-207

Iskandar, Pranoto and Nicola Piper. 'Why Low-Skilled Migration Matters.' *The Indonesian Journal of International & Comparative Law* 3 (2014) : 577-581. *Hein Online*. Web. January 14, 2018

Karagueuzian, Charlotte and Audrey Verdier-Chouchane. 'Taking Africa's Irregular Migrants into Account: Trends, Challenges and Policy Options.' *Africa Economic Brief* 5 (2014): 1-15

Kpodar, Kangni and Patrick Imam, 'Does a Regional Trade Agreement Lessen or Worsen Growth Volatility? An Empirical Investigation.' *Review of International Economics* 24.5 (2016): 949-979. *Wiley Online*. Web. February 1, 2018

Kurihara, Yutaka. 'The Impact of Regional Trade Agreements on International Trade.' *Modern Economy* 2 (2011): 846-849. *Scientific Research Online*. Web. January 31, 2018

Leal-Arcas, Rafael, 'The Fragmentation of International Trade Law: is Not the Time for Variable Geometry', *The Journal of World Investment and Trade* 12.1 (2011) : 145-196, *Hein Online*. Web. February 2, 2018

Lewis, MK. 'The Prisoners' Dilemma Posed by Free Trade Agreements: Can Open Access Provisions Provide an Escape?' *Chicago Journal of International Law* 11.2 (2011): 632-661 *University of Chicago Online*. Web. Nov. 7, 2017

Maas, Willem. 'The Origins, Evolution, and Political Objectives of EU Citizenship.' *German Law Journal* 15.5 (2014): 798-820

Malamud, Andrés. 'Mercosur Turns 15: Between Rising Rhetoric and Declining Achievement.' *Cambridge Review of International Affairs* 18(3) (2005) : 421-436. *Taylor and Francis Online*. Web. Nov. 9, 2017

Malcoms, Christopher P. 'Caribbean Integration Within the CARICOM Framework: The Socio-historical, Economic, and Political Dynamics of a Regional Response to a Global Phenomenon.' *Law and Business Review of the Americas* 10 (2004): 35-64

Marchetti, Juan A. and Petros C. Mavroidis. 'The Genesis of the GATS (General Agreement on Trade in Services).' *European Journal of International Law* 22.3 (2011): 689-721. *Oxford Academic*. Web. February 2, 2018

Nsour, Mohamed F. 'Regional Trade Agreements in the Era of Globalization: a Legal Analysis.' *North Carolina Journal of International Law and Commercial Regulation* 33 (2008): 259-436

O'Brien, Derek. 'CARICOM: Regional Integration in a Post-Colonial World.' *European Law Journal* 17.5 (2011): 630-648

Park, Stephen Kim. 'Special Economic Zones and the Perpetual Pluralism of Global Trade and Labor Migration.' *Georgetown Journal of International Law* 46 (2016): 1379-1429

Peng, Shin Yi. 'Is the Trade in Services Agreement (TiSA) a Stepping Stone for the Next Version of GATS.' *Hong Kong Law Journal* 43 (2013): 611-632. *Hein Online*. Web. February 2, 2018

Petri, et al. 'ASEAN Economic Community : A General Equilibrium Analysis', *Asian Economic Journal* 26.2 (2012): 93-118. *Wiley Online*. Web. February 1, 2018

Poot, Jacques and Anna Strutt. 'International Trade Agreements and International Migration.' *The World Economy* 33.12 (2010): 1923-1954. *Wiley Online*. Web. January 31, 2018

Powell, Joseph and Trisha Low. 'African Regional Trade Agreements as Flexible Legal Regimes; Is the WTO Quietly Fading Away?: The New Regionalism and Global Trade Rules.' *The Georgetown Journal of Law Public Policy* 9 (2011): 261-282

Prittchett Lant and Rebekah Smith. 'Is there a Goldilocks Solution? "Just Right" Promotion of Labor Mobility.' *Centre for Global Development Policy Paper* 094 (2016), *Centre for Global Development Online*. Web. Nov. 7, 2017

Reyes et al. 'Regional Agreements and the Pattern of Trade : A Networks Approach.' *The World Economy* 37.8 (2014): 1128-1151. *Wiley Online*. Web. February 1, 2018

Roy, M., Marchetti, J. & Lim, H., 'Services liberalization in the new generation of preferential trade agreements (PTAs): How much further than the GATS?.' *World Trade Review* 6.2 (2007): 155-192

Santander, Sebastian. 'The European Partnership with Mercosur: a Relationship Based on Strategic and Neo-liberal Principles.' *Journal of European Integration* 27.3 (2005): 285-306. *Taylor and Francis Online*. Web. January 14, 2018

Squire, Vicki. 'Governing Migration through death in Europe and the US: Identification, Burial and the Crisis of Modern Humanism.' *European Journal of International Relation* 23.2 (2016): 513-532

Stephenson, Sherry and Gary Hufbauer. 'Labor Mobility'. *Preferential Trade Agreement Policies for Development* (2011): 275-306. *World Bank Library Online*. Web. January 13, 2018

Thornberg, Christopher F. and Frances L. Edwards. 'Legal Article: Failure of Trade Liberalization: A Study of GATS Negotiation.' *Journal of International Business & Law* 10 (2011): 325-346. *Lexis Nexis*. Web. January 15, 2018

Thuo Gathii, James. 'African Regional Trade Agreements as Flexible Legal Regimes.' *North Carolina Journal of International Law & Commercial Regulation* 35 (2010): 571-668

Van Krieken, Peter. 'Migrants Rights of the Law of the Sea: Further Efforts to Ensure Universal Participation.' *International Migration* 45.1 (2007): 209-224

Vicard, Vincent. 'Trade, conflict, and political integration: Explaining the heterogeneity of regional trade agreements.' *European Economic Review* 56 (2012): 54-71. *Science Direct*. Web. January 31, 2018

Wickramasekara, P., 'Globalisation, International Labour Migration and the Rights of Migrant Workers.' *Third World Quarterly* 29.7 (2008): 1247-1264

Yue, Chia Siow. 'Free Flow of Skilled Labour in the AEC', in Urata, S. and M. Okabe (eds.), *Toward a Competitive ASEAN Single Market: Sectorial Analysis*. *ERIA Research Project Report* 3 (2010): 205-279

Zogo Nkada, Simon-Pierre. 'La libre circulation des personnes : réflexions sur l'expérience de la C.E.M.A.C. et de la C.E.D.E.A.O.' *Revue internationale de droit économique* 25.1 (2011): 113-136

### Websites

African Union. 'CFTA-Continental Free Trade Area.' <https://au.int>, 2017. Web. November 7, 2017

Anukoonwattaka, Witada and Adam Heal. 'Regional Integration and Labor Mobility : Linking Trade, Migration and Development.' [www.unescap.org](http://www.unescap.org), 2014. Web. January 11, 2018

ASEAN. 'Association of Southeast Asian Nations.' [www.asean.org](http://www.asean.org), 2017. Web. February 3, 2018.

Asian Development Bank Institute. 'Labor Migration, Skills & Student Mobility in Asia.' [fr.scribd.com](http://fr.scribd.com), 2014. Web. January 11, 2018

Bouzas et al. 'In-depth analysis of MERCOSUR integration, its prospective and the effects thereof on the market access of EU Goods, Services and Investment.' [sciencepo.fr](http://sciencepo.fr). University of Barcelona Observatory of Globalisation, 2002. Web. January 12, 2018

CARICOM. 'Our Journey'. [caricom.org](http://caricom.org), 2018. Web, February 3, 2018

Chaisse, Julien and Lloyd Meng, Ibid, Note 231, Page 96; OECD. 'Trade and Migration: Building Bridges for Global Labour Mobility.' [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org), 2004. Web. January 15, 2018

Changwe Nshimbi, Christopher and Lorenzo Fioramonti. 'A region without borders? Policy frameworks for regional labour migration towards South Africa.' [www.miworc.co.za](http://www.miworc.co.za), 2013. Web. November 7, 2017

Crépeau, François. 'From Enforced Closure to Regulated Mobility: The Need for a Paradigm Shift in Migration Policies.' [www.ryerson.ca](http://www.ryerson.ca). Ryerson Centre for Immigration and Settlement, May 2015. Web. January 15, 2018

Crépeau, François. 'Report of the Special Rapporteur on the human rights of migrants.' [fisp.diocesipadova.it/](http://fisp.diocesipadova.it/). 71<sup>st</sup> Session, A/71/40767, July 20, 2016. Web. January 15, 2018

Crépeau, François. 'Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants.' [www.ohchr.org](http://www.ohchr.org), General Assembly A/HRC/29/36, May 8, 2015. Web. January 24, 2018

David, Anda and Mohamed Ali Marouani. 'The Impact of Labor Mobility on Unemployment: a Comparaison between Jordan and Tunisia.' [erf.org.eu](http://erf.org.eu).



Economic Research Forum – Working Paper No 823, December 2013. Web. January 13, 2018

Dayton-Johnson, Jeff et al. 'Migration and Employment - Promoting Pro-Poor Growth.' *citeserx.ist.psu.edu*. OECD, 2009. Web. January 13, 2018

ECOWAS. 'Economic Community of the West African States – History.' *www.ecowas.int*, 2016. Web. February 3, 2018

ECOWAS. 'Protocol Relating to Free Movement of Persons, Residence and Establishment.' *documentation.ecowas.int*. A/P 1/5/7929, May 1979. Web. January 15, 2018

EUROPA. 'History of the European Union.' *www.europa.eu*, 2018. Web. February 3, 2018

Janta, Barbara, et al. 'Employment and the changing labour market: Global societal trends to 2030.' *www.rand.org*. Rand Corporation, 2015. Web. January 14, 2018

Joint Paper (ILO, OECD, World Bank). 'The Contribution of Labour Mobility to Economic Growth.' *www.ilo.org*, 2015. Web. November 7, 2017

Jurje, Flavia and Sandra Lavenex. 'ASEAN Economic Community: what model for labour mobility?' *www.nccr-trade.org*, 2015. Web. January 11, 2018

Giordano, Paolo, 'The External Dimension of MERCOSUR: Prospects for North-South Integration', *https://publications.iadb.org*. Inter-American Development Bank, 2003. Web. January 15, 2018

Global Commission on International Migration. 'Migrating in an interconnected world: New directions for action.' *www.iom.int*. Report of the Global Commission on International Migration, 2005. Web. January 13, 2018

Harris, Richard and Nicolas Schmitt. 'The Consequences of Increased Labour Mobility within an Integrating North America.' *ist.psu.edu*, 2001. Web. January 12, 2018

International Labour Organisation (ILO). 'International Labour Conference: Towards a fair deal for migrant workers in the global economy.' *www.ilo.org*, 2004. Web. November 7, 2017

International Labour Organisation (ILO). 'International Labour Migration: A Right-Based Approach.' *http://digitalcommons.ilr.cornell.edu*. International Labour Office, 2010. Web. January 12, 2018

International Labour Organisation (ILO). 'Labour mobility in ASEAN: Current commitments and future limitations.' *apmigration.ilo.org*, May 15 2016. Web. November 7, 2017

International Labour Organisation (ILO). 'Migrant Workers (Supplementary Provisions) Convention.' *www.ilo.org*. 24 June 1975 C143. Web. January 16, 2018

International Labour Organisation (ILO). 'Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries.' *un-act.org*, 2015. Web. November 7, 2017

International Migration and Human Rights: GMG. 'Challenges and Opportunities on the Threshold of the 60<sup>th</sup> Anniversary of the UN Declaration of Human Rights.' *unfpa.org*. Global Migration Group, 2010. Web. January 13, 2018

Kerr, Sari Pekkala and William R. Kerr, 'Economic Impacts of Immigration: a Survey', *www.nber.org*, National Bureau of Economic Research, January 2011. Web. January 15, 2018

Kritzinger-van Niekerk, Lolette. 'Regional Integration: Concepts, Advantages, Disadvantages and Lessons of Experience.' *www.sarpn.org*. Southern African Poverty Network, 2005. Web. January 13, 2018

Kruger, L. 'North-North, North-South and South-South Relations.' *www.eolss.net*. Global Transformation and World Future, 2008. Web. November 7, 2017

Martin, Philip and Abella, Manolo. 'ILO Asia-Pacific Working Paper Series: Reaping the economic and social benefits of labour mobility: ASEAN 2015.' *ilo.org*, 2015. Web. January 11, 2018

Mattoo, Aaditya and Antonia Carzaniga, 'Moving People to Deliver Services', *elibrary.worldbank.org*, 2003. Web. January 14, 2018

McLean, Sheldon and Jeetendra Khadan. 'An assessment of the performance of CARICOM extraregional trade agreement.' *repositoria.cepal.org*. Eclac Subregional Headquarters for the Caribbean, 2015. Web. January 12, 2018

Munz, R. et al., 'What are the migrants contribution to employment and growth? A European Approach,' *www.oecd.org*. Migration Research Group, 2007. Web. January 12, 2018

Nelson, Julia. 'Current regimes for temporary movement of Service Providers.' *www.wto.org*, Joint WTO - World Bank Symposium on Movement of Natural Persons (mode 4) under the GATS, 2002. Web. January 12, 2018

Nielsen, Lynge. 'Classification of Countries Based on Their Level of Development: How it is Done and How it Could be Done.' *pdfs.semanticsholar.org*. International Monetary Fund Working Paper, 2011. Web. January 11, 2018

OECD. 'Regionalism and the Multilateral Trading System.' *www.bilaterals.com*, Organisation for Economic Cooperation and Development, 2003. Web. November 8, 2017

OHCHR. 'Report of the Special Rapporteur on the Human rights of Migrants.' *www.ohchr.com*. 71st session. July 20, 2016. Web. November 10, 2017

- Panizzon, Marion. 'Trade and Labor Migration GATS Mode 4 and Migration Agreements.' *www.library.fes.de*. Occasional Papers: Dialogues on Globalization, 2010. Web. November 7, 2017
- Pascouau, Yves. 'Intra-EU mobility: the "second building block" of EU labour migration policy.' *www.epc.eu*. European Policy Centre, 2013. Web. January 15, 2017
- Pew Research Center. 'Remittance Flows Worldwide in 2015.' *pewglobal.org*, August 31, 2016. Web. January 13, 2017
- Ratha, Dilip, et al. 'Impact of Migration on Economic and Social Development: a Review of Evidence and Emerging Issues.' *elibrary.worldbank*, 2011. Web. January 13, 2018
- Rother, Stefan. 'Labour Mobility and the ASEAN Economic Community.' *www.oav.de*. German Asia-Pacific Business Association, 2014. Web. January 11, 2018
- SELA. 'Evolution of the CARICOM integration process.' *www.sela.org*. Latin American and Caribbean Economic System, 2014. Web. January 12, 2018
- Stephenson, Sherry M. and Francisco Javier Prieto. 'Evaluating Approaches to the Liberalization of Trade in Services: Insights from Regional Experience in the Americas.' *www.oas.org*. Organisation of the American States, 2002. Web. February 2, 2018
- Taher Ajaali, Tawfik. 'Labour Market and Employment Policy in Libya.' *etf.europa.eu*. European Training Foundation, 2014. Web. January 13, 2018
- Taran, Patrick and Eduardo Geronimi. 'Globalization, Labour and Migration: Protection is Paramount.' *www.globalmigrationpolicy.org*. International Migration Programme, 2002. Web. January 12, 2018
- Till, Matthias. 'UNECE Working Paper Series on Statistics.' *www.unece.org*. UNECE Working Paper Series on Statistics, Issue 2, February 2017. Web. January 12, 2018
- Trachtman, Joel P. 'The Role of International Law in Economic Migration.' *law.nyu.edu*. Society of International Economic Law - Working Paper No 24/08 Geneva Inaugural Conference, 2008. Web. January 13, 2018
- United Nations. 'Country Classification.' *www.un.org*. World Economic Situations and Prospects (WESP), 2014. Web. January 11, 2018
- UNFPA. 'Meeting the Challenges of Migration: Progress Since the ICPD.' *popline.org*. International Migration Policy Programme, 2004. Web. January 12, 2018

United Nations, 'International migration and development: Report of the Secretary General on Globalization and Interdependence', *www.un.org*, July 25, 2013. Web. January 11, 2018

United Nations. 'Report of the Special Rapporteur on the Human Rights of Migrants on the Impact of Bilateral and Multilateral Trade agreements on the Human Rights of Migrants.' *eafood.org*. Human Rights Council 32nd Session, 4 May 2016. Web. January 12, 2018

United Nations. 'The "New Regionalism" and North-South Trade Agreement.' *unctad.org*. United Nations Conference on Trade and Development, 2007. Web. January 14, 2018

United Nations Economic and Social Council. 'In-depth review of labour mobility and globalisation.' *http://www.unece.org*. Working Paper ECE/CES/2015/11, 2015. Web. Nov. 7, 2017

UNU-CRIS. 'Deepening the Social Dimensions of Regional Integration.' *biblio.ugent.be*. UNU-CRIS Working Papers, 2008. Web. February 4, 2018

Virág-Neumann, Ildikó. 'Regional Trade Agreements and the WTO.' *www.kgk.uni-obuda.hu*. 7th International Conference on Management, Enterprise and Benchmarking, 2009. Web. Nov. 7, 2017

Wickramasekara, Piyasiri. 'The Views of the International Labor Organization.' *www.pecc.org*, 2008. Web. Nov. 7, 2018

Winters, Alan et al. 'Liberalising Temporary Movement of Natural Persons: an Agenda for the Development Round.' *sitesource.worldbank.org*, 2002. Web. January 13, 2018

World Bank (The). 'GDP (current US\$).' *dataworldbank.org*, 2017. Web. January 13, 2018

World Bank (The). 'Global Economic Prospects: Economic Implications or Remittances and Migration.' *pubdocs.worldbank.org*, 2006. Web. January 13, 2018

World Bank (The). 'Migration and Development, a Role for the World Bank Group.' *pubdocs.worldbank.org*, September 2016. Web. January 13, 2018

World Bank (The). 'Trends in Migration and Remittances 2017.' *worldbank.org*, April 21, 2017. Web. January, 13, 2018

World Trade Organization. 'Regional Trade Agreements and Preferential Trade Arrangements.' *https://www.wto.org*, 2017. Web. January 11, 2018